REPORT

OF THE

ATTORNEY GENERAL

OF THE

TERRITORY OF ALASKA

January 1, 1939-December 31, 1940

BY

JAMES S. TRUITT
ATTORNEY GENERAL

REPORT

OF THE

ATTORNEY GENERAL

OF THE

TERRITORY OF ALASKA

January 1, 1939-December 31, 1940

BY

JAMES S. TRUITT
ATTORNEY GENERAL

Juneau, Alaska
December 31, 1940

Honorable Ernest Gruening
Governor of Alaska
Juneau, Alaska

Sir:

We have the honor to submit to you, and, through you, to the Honorable Territorial Legislature, the Biennial Report of the administration of this office for the two years beginning on the 1st day of January, 1939, and ending on the 31st day of December, 1940, pursuant to the provisions of Section 653, Chapter V, Compiled Laws of Alaska, 1933.

Leaving the office of Attorney General, and, in all probability, departing from public service for all time to come, we go forth with a feeling of the fine memories of the associations we have had during our eight years of public service in this office. It has been a pleasure and an honor to have served the Territory in the capacity of Attorney General, and during this period of service we have tried always to keep clearly in our mind that we were elected by the direct vote of the people of the Territory, and were available to any and all who had an interest of the Territory to serve. In all of our work we have come to the conclusion that there is nothing unimportant, that all things that are public in character are important. We have never kept aloof from the needs and desires of the public, and have endeavored to work for its ultimate good.

All in all, our association with other Territorial officials and employees has been most pleasant, and in closing our term and writing the last chapter we desire to affirm a feeling of tolerance and friendship for all other Executive officers, Institutional and Departmental heads and Employees, and we take this occasion to express our sincere appreciation to those with whom we have worked in cooperation with their steady help and loyal support, and it is our fondest hope and most sincere desire that this office continue to grow and to develop, and to properly protect the interests of the Territory.

Respectfully,

JAMES S. TRUITT,
Attorney General.

REPORT

of the

ATTORNEY GENERAL

OF ALASKA

January 1, 1939-December 31, 1940

GENERAL SCOPE OF DUTIES

The functions and duties of the office of Attorney General are set forth generally in Chapter V, Compiled Laws of Alaska, 1933, and in various other acts of our Legislature.

We believe it unnecessary to go into detail and recite the several official acts and duties required and performed pursuant thereto, except, perhaps, to say that under these statutory provisions the Attorney General is required to appear for the Territory and prosecute and defend all necessary and proper actions for the collection of revenues under our Territorial laws, and to file informations and prosecute all offenses against the revenue and other laws of the Territory, the prosecution of which is not otherwise provided for, and, when requested by the Governor, the Auditor and the Treasurer, or any two of them, to appear for the Territory and prosecute or defend in any other court or before any officer both civil and criminal causes in which the Territory is an interested party.

It is almost impossible to chronicle any appreciable amount of the work, which continues to steadily increase. Innumerable communications, both by telephone and in person, requiring time but not meriting expensive space in a recital of the Attorney General's official acts and

duties, have been given orally to those entitled to them on points of law they needed for immediate and emergency use. Many other opinions have been given by letter when not of general interest or concern, and the remainder of them upon written requests for formal official opinions on points of law which were of more or less general interest and concern to the Territory at large. These formal opinions have been kept as low as practicable by conference, verbal advice and inter-office correspondence on routine and administrative matters. Innumerable requests for legal information have been received by this office from officials of local communities throughout the Territory, and within the limitations provided by statute the Attorney General has answered these questions. Elsewhere in this report will be found a few of the opinions rendered by this office which we believe to be of general interest to the public.

This office has corresponded with different officials and others throughout the Territory in an effort to obtain suggestions and recommendations on needed legislation, but to date most of our communications remain unanswered.

Copies of all Memorials passed at the last Session of our Legislature were addressed to the persons and bodies designated, and a report will be given herein as required by statute.

Most of the litigation in which the Territory is interested, or a party, has been or is being completed with satisfactory results, a more detailed account of which will be found elsewhere in this report.

REPORT ON MEMORIALS

Following is a report on the Memorials passed by the 1939 Session of our Legislature, as required by Section 653, Compiled Laws of Alaska, 1933:

L. C. Covell, Rear Admiral, United States Coast Guard, and Acting Commandant, acknowledged receipt of copy of

House Joint Memorial No. 27, which Memorial stressed the need for the reconstruction of the Coast Guard Station at Nome, Alaska, and advised that the Coast Guard had not been able to obtain funds for the reconstruction of the Nome Station though efforts had been made from time to time, and added further that as no funds for such a purpose were in prospect he was unable to advise when favorable action could be taken on this matter.

Receipt of Senate Joint Memorial No. 13, concerning the salaries of employees of the Post Office Department located in Alaska, was acknowledged by First Assistant Postmaster General, W. W. Howes, who advised that the same had been referred to the Division of Post Office Service for consideration.

Smith W. Purdum, Fourth Assistant Postmaster General, also acknowledged receipt of Senate Joint Memorial No. 13, concerning a twenty-five per cent increase in pay for all Post Office Department employees in Alaska, and since receiving the aforementioned acknowledgments we are advised that a material increase in salaries was granted in April, 1940.

Receipt of Senate Joint Memorial No. 7 was acknowledged by W. P. Bartel, Secretary, Interstate Commerce Commission. Mr. Bartel advised that a copy of this Memorial had been transmitted to the Commission by Hon. E. L. Bartlett, Secretary of Alaska. It would appear from copies of certain correspondence that Mr. Bartel had requested further information from Secretary Bartlett relative to the rates with respect to which an investigation was sought.

L. C. Nelson, Director, Division of Regulation, U. S. Maritime Commission, also acknowledged receipt of Senate Joint Memorial No. 7, addressed to the Interstate Commerce Commission and the United States Shipping Board, requesting an investigation into the rate structure of water carriers operating between the United States and Alaska, and advised that the Commission had received a

copy of this same Memorial from Hon. E. L. Bartlett, Secretary of Alaska, and that he had requested from Mr. Bartlett a more detailed basis of complaint, upon the receipt of which the Commission would give the Memorial further consideration.

Harry L. Brown, Acting Secretary of the Department of Agriculture, acknowledged receipt of the Memorials addressed to the Secretary of Agriculture, namely, Senate Joint Memorials 2 and 3, and House Joint Memorials 7, 9, 10 and 21, and explained that with reference to those matters coming under the jurisdiction of the Department of Agriculture which primarily involved the Forest Service, he was asking Mr. Silcox of the Forest Service to explore what might be done in the way of cooperative assistance, stating further that Mr. Silcox had just returned to Washington from a trip to Alaska and that he would be asked to submit recommendations on any matters in which they could, within existing law, take action, and also as to what additional legislation might be necessary to carry out the purposes of the Memorials.

M. Kerlin, Administrative Assistant to the Secretary of Commerce, advised that that Department had received copies of House Joint Memorials 31, 28 and 40, relating to the fisheries of Alaska, and because of the fact that under the President's Reorganization Plan No. 2, which became effective July 1, 1939, the Bureau of Fisheries was transferred to the Department of the Interior, and that the Memorials referred to were being transmitted to Harold L. Ickes, Secretary of the Interior, for his consideration.

Senator Millard E. Tydings, Chairman of the Committee on Territories and Insular Affairs, acknowledged receipt of Senate Joint Memorials 3 and 5, and stated that he would be glad to place these in the files of the Committee.

Charles W. Eliot, Director, National Resources Planning Board, acknowledged receipt of Senate Joint Memorial No. 3.

Honorable Anthony J. Dimond, Delegate to Congress from Alaska, acknowledged receipt of Memorials addressed and directed to his attention.

Senate Joint Memorials 2, 3, 5 and 6, and House Joint Memorials 20 and 29, addressed to Secretary Ickes, were referred to Ernest Gruening, Director, Division of Territories and Island Possessions, who advised that the matters covered therein would be given serious consideration.

M. H. McIntyre, Secretary to the President, acknowledged receipt of copies of Senate Joint Memorials 2, 3, 5, 6 and 16, and House Joint Memorials 18, 27, 28, 29, 31 and 36.

J. R. White, Acting Director of the National Park Service, in acknowledging receipt of Senate Joint Memorial No. 2, whose object was to find some means of controlling predatory animals in the Mt. McKinley National Park, and the Katmai and Glacier Bay National Monuments, stated that the wildlife policy of the National Park Service allows scientific control of predators whenever extermination or undue depletion of a prey species is threatened, and added that the Service continually checks on conditions affecting all species of wildlife, and that when facts warrant proper and sufficient action would assuredly be taken. Mr. White, in commenting further, added that the Service had been aware for some time of the serious nature of the predator problem in Alaska, and that last spring (1939) a scientific study of the subject in Mt. McKinley National Park was authorized, and that one zoologist and two botanists were working on the biological problems and that as soon as the results of their studies were determined whatever action would be necessary would be taken, to insure the continued well-being of Alaskan wildlife insofar as administered by the National Park Service.

W. C. Henderson, Acting Chief of the Bureau of Biological Survey, in acknowledging receipt of and commenting on Senate Joint Memorial No. 2 and House Joint Memorial No. 21, both relating to the protection of wildlife,

stated that both Memorials would have appropriate consideration in connection with the matters to which they related.

A. Willis Robertson, Chairman, Select Committee on Conservation and Wildlife Resources, in acknowledging receipt of Senate Joint Memorial No. 2, relative to Federal predatory animal control in the National Parks of Alaska, stated that he was in full sympathy with our attitude on the subject and would be glad to request the Secretary of the Interior to try to work out a cooperative plan that would promote the Territory's fur and game resources.

W. B. Bankhead, Speaker of the House of Representatives, acknowledged receipt of Senate Joint Memorial No. 16, which opposed the setting aside of Admiralty Island as a National Park Reserve, and advised that such Memorial would be referred to the appropriate committee of the House of Representatives.

C. L. Williams, Acting Surgeon General, U. S. Public Health Service, acknowledged receipt of House Joint Memorial No. 24, in which the belief was expressed that the construction and administration of the merchant seaman medical relief law was to the discrimination of a large part of the fishing population of the Territory, and advised that the Public Health Service was furnishing medical relief in accordance with the law and regulations which definitely defined who was a seaman for those purposes, and who was not, and added that he would be glad to comply fully with any extension of medical relief facilities which might be authorized by Congress.

Grove Webster, Chief, Private Flying Development Division, Civil Aeronautics Authority, acknowledged receipt of House Joint Memorial No. 34 with reference to the vocational flight training program, and stated that they would want as many institutions as possible to participate in the pilot training program, and that it was assured that any application from the University of Alaska would be given careful consideration.

RECOMMENDATIONS

It is recommended that the Office of Labor Commissioner for the Territory of Alaska be made operative and given funds and authority with which to properly function, or that the present law creating the office and defining its duties be repealed, to-wit, Article I, Chapter XLI, Sections 2121-2129, Compiled Laws of Alaska, 1933.

That Chapter 80, Session Laws of Alaska, 1939, an Act to protect the lives, health and morals of women workers in the Territory of Alaska, be amended to embrace back wages earned and to provide for the collection of same.

That the gold tax statute, namely, Chapter 20, Session Laws of Alaska, 1937, as amended by Chapters 54, 62 and 67, Session Laws of Alaska, 1939, be again amended so as to have teeth, there being no criminal provision for nonpayment of taxes.

Chapter 84, Session Laws of Alaska, 1935, relating to the payment of compensation to injured workmen, should be repealed on the ground that said statute is unconstitutional.

Section 1781, Compiled Laws of Alaska, 1933, as amended by Chapter 47, Session Laws of Alaska, 1935, should again be amended to require all applicants for pension allowances to schedule all property, real and personal, owned by such petitioner within and without the Territory, before allowances are granted, and to further require the Board of Trustees of the Pioneers' Home, or other officials, to file for record in the recording precinct wherein such property is located such schedule of property. Such an amendment to our present statute is vitally necessary to protect the Territory against frauds which are being committed, to-wit, pensioners disposing of their property to some masquerading friend a few weeks or days before their demise. In a recent claim against the estate of a Territorial pensioner who feigned destitution and had been

receiving a pension because of his apparent destitute circumstances for the past ten years, and who was granted permission to leave the Territory because of ill health and continued to draw said pension until the date of death in the States, it was discovered upon his death that he left estates in both the States of California and Nebraska, and the Territory at this time is endeavoring to recover such sums as were expended on his behalf. The importance and need of such an amendment to our existing law as proposed here was stressed in our last report, and we believe it should be made applicable to any Territorial beneficiary.

Our attention has been called, on a number of occasions, to the great need of an inspector to inspect outmoded and out-dated machinery in operation in manufacturing establishments in the Territory, and it is our suggestion that such an inspector be provided for and his duties with reference to operating machinery in such places be defined.

Section 1502, Compiled Laws of Alaska, 1933, should be so amended as to require Independent Candidates for office in Alaska to pay the same filing fees as those required by candidates representing a political party.

Subsection 1 (a) of Section 3138, Compiled Laws of Alaska, 1933, should be amended to require the licensees named therein to file copies of their Annual Territorial Licenses with the Clerk of the District Court, and to prohibit said licensees from practicing their said profession pending the filing of said copies.

Paragraph 2 of Section 2054, Compiled Laws of Alaska, 1933, should be amended in such manner that the lien therein provided should be a preferred lien except to Territorial excise taxes.

Section 3161, Compiled Laws of Alaska, 1933, should be so amended that all prosecutions thereunder shall be in the name of the Territory, and all fines collected thereunder remitted to the Territorial Treasurer and covered

into the General Fund of the Territory. Such an amendment deserves consideration though it was introduced in the last Session of our Legislature and tabled.

Our attention has also been called to the necessity for the following changes in our laws and needed legislation:

Appellants in the Territory should be given the option of making the evidence in the case a part of the record in the manner set forth in the Federal Rules of Civil Procedure in Rules 75 and 76, as well as by a bill of exceptions which is now provided for by our law.

Section 2925, Compiled Laws of Alaska, 1933, left out an entire clause in purporting to copy Section 379, Compiled Laws of Alaska, 1913. The clause should follow the word "provided" in the fifth line of the Eleventh Subdivision of Section 2925, and is in words, as follows: "Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice."

Section 4064, Compiled Laws of Alaska, 1933, states that costs are allowed to the defendant in actions mentioned in Section 4063. Section 4062 is the proper reference.

Section 3883, Compiled Laws of Alaska, 1933, provides that an order or judgment, other than for the payment of money, may be enforced by contempt proceedings. This section was taken from Oregon. It has the effect of taking away from the courts in Alaska the power to compel by contempt proceedings, a man to pay alimony or attorney's fees, costs, etc., to his wife to whom a divorce has been granted. Oregon rectified this situation in 1923 by amending the law so as to make a disobedience of a judgment for the payment of alimony contempt of court. (See State vs. Francis, 269 Pac. 880). The right to compel by contempt proceedings the payment of suit money pendente lite and to compel the payment of allowances in suits for separate maintenance still exists in Alaska, and, as the

distinction between those cases and the first one mentioned is somewhat fine, many attorneys have not realized that the court has no power to enforce the payment of alimony upon the final decree by contempt proceedings. We should have an amendment similar to that of Oregon.

Where orders of the Probate Court decree who the heirs of a deceased person are, these orders show the devolution of title to real estate from a deceased person to his heirs. At present these when recorded are indexed in the miscellaneous index and are not shown in the index of deeds. Again, when title passes by will and the will is recorded, it is indexed in wills and is not shown in the deed index, although it in fact passes the title from the deceased person to the devisee. An act should be passed in substantially the following form:

> "Any instrument showing the passing of title to real estate by operation of law or otherwise, or which in itself passes title to real estate, shall be indexed by the recorder in the deed index, and not elsewhere, with the proper reference to the book and page wherein the same is spread upon the record."

Section 2925, Compiled Laws of Alaska, 1933, should be amended by adding thereto a Twelfth Subdivision in the following form:

> "Twelfth. (a) Whenever there is a vacancy in the office of the commissioner and ex-officio recorder for any established recording district, it shall be lawful, upon tendering the proper fee, to file in the office of the clerk of the division of the District Court having supervision over such recording district any instrument which might properly have been filed or recorded in said vacant office;
>
> "(b) Where such instrument has been transmitted to the clerk of the District Court through the United States mail, said clerk shall file the same as of the day when deposited in said mail;
>
> "(c) Whenever such vacancy is filled said clerk of the Court shall forward to the commissioner and ex-officio recorder of said recording district any instruments filed with him as above mentioned, together with

> the recording fees tendered him, and said instruments shall be deemed to have been filed and/or recorded in said recording district as of the day the same were properly marked filed by the clerk of the District Court."

Frequently, in other divisions of the Territory, Commissioners die or resign, and it takes several months to procure a new Commissioner. In the meantime location certificates are required to be filed to save the rights of the locators, and also other instruments are required to be filed, such as affidavits of renewal of chattel mortgages, and if the same are not filed damage may be worked upon innocent people, and it is in order to obviate this situation that the above amendment is proposed.

Sometimes Congress suspends the operation of Section 2324, R.S.U.S., relative to annual labor on mining claims. As the courts have always held that a state or territory can require more annual labor than is required by the Federal law, the suspension of Section 2324 always leaves the question open of whether or not assessment work is still required in Alaska inasmuch as there are Territorial statutes requiring such work and there is no statute stating they are suspended. Many attorneys in Alaska have expressed the opinion that no suspension of Section 2324, R.S.U.S. does away with the requirement of doing assessment work in Alaska pursuant to the Territorial law. Inasmuch as the average miner, and many attorneys, immediately assume that assessment work is not required in Alaska whenever Congress suspends Section 2324, R.S.U.S, and especially mentions that it is suspended as to Alaska, a bad situation may sometime arise if the matter is not clarified. An act of the following nature would cure the evil:

> "Whenever the general laws of the United States requiring annual labor in Alaska upon mining claims are suspended, the laws of Alaska requiring annual labor upon mining claims shall likewise be suspended upon the same terms and conditions."

The Act of Congress approved August 5, 1939, 53 Stat., page 1219, authorizes Postmasters in Alaska to perform the functions of Notaries Public whenever an oath or acknowledgment is permitted by an **Act of Congress.** Thus, if an oath or acknowledgement is required by the act of the Territorial Legislature, the Act of Congress above-mentioned does not permit the Postmaster to take the oath or acknowledgment. This causes much confusion and should be remedied by making the Federal Act apply to the acts of the Legislature.

Section 1732, Compiled Laws of Alaska, 1933, makes it a misdemeanor for anyone to obstruct or injure any of the works, property or material used in building a public road, bridge or ferry. It does not make it a crime to obstruct a highway, and the act should be so amended as to make it apply to obstructing a public highway.

A law should be enacted requiring the filing of an intention to get married several days in advance. Information on file shows that minors falsify their ages, and as the law stands at present the parents have no right to bring an action to set aside such a marriage. The action can be brought only by one of the minors. Also, many are married while under the influence of liquor, and legislation is needed to correct these abuses.

At present depositions cannot be used in a trial of criminal cases (with one exception—that is, where a continuance has been granted). Often a witness has to be brought from the States to Alaska to prove some very minor matter. If a man having a thousand or two dollars to his name were unjustly charged with some crime which he could disprove only by the testimony of a number of his acquaintances in the States, he could very easily have to spend every cent he has bringing those people to Alaska to testify. We should have a law permitting the use of depositions in a proper case. If an act were passed to the effect that upon good cause shown the Judge of the District Court would have the power to make an order in a criminal case permitting the taking and use of depositions

under such conditions as to be just and fair to the parties, an advance of considerable importance would be achieved.

Writs of attachment or execution will be served by the United States Marshal only at points where he has deputies or to which the party will pay his expenses. In the Fourth Division, where labor liens were foreclosed on dredges in the Fortymile District, the expense of the Marshal for flying from Fairbanks to make levies, to post notices of sale, to come back to Fairbanks, again go for the sale, etc., ran into hundreds of dollars. Provisions should be made for the appointment of a qualified person to serve writs when the Marshal's expense for doing same becomes too great. An Act in the following words would cure the defect:

> "(a) Where the expenses of the Marshal, or his deputy, to serve or execute a writ of attachment or execution or order of sale would be exorbitant, the Judge of the District Court may appoint a qualified person to serve such writ or order, and he shall have all the powers of a Marshal with reference thereto, and shall serve, execute and return said writ or order in the same manner as a Marshal.
>
> "(b) Before such person shall be appointed, the party moving for such appointment shall file a motion in the cause applying for the appointment and setting forth, under oath, the reasons therefor and serving said motion and showing upon the Marshal, or his deputy, designating the time and place when the same will be called up for hearing before the Judge. Such appointment may be with or without bond in the discretion of the Judge and all costs necessarily connected therewith shall be advanced by the moving party to be recovered as other costs."

The present law permits the Marshal to appoint someone to serve writs when a deputy is not available, but the Marshal refuses to do this on the theory that a person so appointed by him would be a special deputy who would require the approval of the Attorney General in Washington, and who would have to qualify as a deputy marshal with a Marshal's bond and for whose acts the Marshal

would be responsible. The present statute, therefore, does not remedy the evil. Under the present law, the owner of a placer mine five hundred miles from Fairbanks might be in Fairbanks when a writ of attachment was issued against him, and yet the Marshal would have to make that five hundred mile trip to post a notice on the claim when much better notice could have been given by serving the owner direct and recording a statement. The result is that, in many instances, litigants are deprived of their just due because of exorbitant traveling expenses which are necessary for the Marshal to serve the writs. The following act would remedy the situation:

> "Real property may be levied upon under writs of attachment or execution by serving and recording a notice and a duplicate thereof. The notice shall be made and filed by the person authorized to serve the same. It shall bear the date thereof, describe fully the property levied upon and the writ under which the levy is made. The original of said notice shall be served as a summons is served upon the party whose interest is levied upon. The duplicate of said notice shall be recorded in the office of the recorder of the recording district wherein said property lies. Upon said notice and duplicate being served and filed, as aforesaid, the levy shall be as complete as when made pursuant to the other provisions of law for the service of such writs."

Under the present law the statute of limitations does not commence to run against the creditors of a deceased person until an executor or administrator is appointed. Thus, if a man with "wild-cat" mining claims dies and no one applies for administration for ten or fifteen years and the mine then becomes valuable and an administrator appointed, people could come in claiming bills against him which were incurred just under six years prior to his death or from sixteen to twenty-one years from the time of presenting the bill. This condition would make it impossible for the executor or administrator to know whether or not the bills were legitimate. There should be a law limiting the time within which bills could be presented against

a deceased person to at least six years from the time of his death. Creditors always have the right to come in and apply for administration if no one else does, and this would compel them to do so.

As appeals are now permissible in all divorce cases, we should have a statute forbidding remarriage of the parties until the expiration of the time for appeal, or until the termination of an appeal, if one has been taken, and the decrees confirmed.

LITIGATION

At the time of making our last Biennial Report there was pending in the Circuit Court of Appeals, the case of Melville St. Elmo Carscadden vs. Territory of Alaska. This case involved a claim to property escheated to the Territory by an order of the Probate Court, and the statute limiting the time for bringing action for the recovery of the property was shortened from ten to seven years. From the effective date of amendment, the claimant had over two years of the seven provided by the amendment within which to bring his action. He did not bring his action within this time, but did bring it within the ten year period which was in force at the time of the escheating order, and our District Court held that the statute had run against the action. An appeal was taken from the judgment of the District Court and the decision of the District Court was reversed by the Circuit Court of Appeals, by a divided court, on the ground that the Act failed to provide a given date from which pre-existing causes of action should be barred.

Also, at the time of making our last report there was pending in the Circuit Court of Appeals the case of the Territory vs. Alaska Juneau Gold Mining Company, whereby the Territory sought to recover for the deaths of certain employees under the provisions of Chapter 84, Session Laws of Alaska, 1935. The District Court for the First Judicial Division held that the Territorial Legislature had exceeded its authority in enacting such a statute and de-

cided in favor of the Alaska Juneau Gold Mining Company. At the request of the Board of Administration, the case was taken to the Circuit Court of Appeals, that the question might be settled as to whether or not the Territorial Act upon which this action was based was constitutional and valid in all respects. The Circuit Court of Appeals ruled otherwise, however, by a divided court, concluding that Section 2161, Compiled Laws of Alaska, 1933, as amended by Chapter 84, Session Laws of Alaska, 1935, violated Section 8 of the Organic Act and was, therefore, invalid, and the judgment of the District Court was affirmed, and we were instructed to carry the case no further.

A suit was filed by the Territory against C. M. Hawkins, for the collection of taxes due on mining operations for the years 1937, 1938 and 1939. This case is at issue and has been for some time, but owing to the illness of the defendant, who is now, and has been for several months past, out of the Territory, the issues have not been settled.

At the time of making our last report there was pending in the District Court for the Fourth Judicial Division, at Fairbanks, two cases involving the collection of the gold tax, namely, Territory of Alaska vs. Alaska Gold Dredging Corporation and the Territory of Alaska vs. Walker's Fork Gold Corporation. Judgment was taken in both cases, and subsequently settled on a percentage basis by both the Territory and the Federal Government.

A suit was instituted in the Second Judicial Division, at Nome, against the Kougarok Consolidated Placers, Inc., to collect taxes on mining operations for the years 1937 and 1938 in the amount of $5,574.16, which amount was paid and cause of action settled.

A cause of action was filed against the Eureka Placers, Inc., to recover compensation on account of the death of certain of its employees, and was dismissed by the plaintiff for the reason that the statute under which the same was filed was declared unconstitutional by the Circuit Court of

Appeals in the case of the Territory of Alaska vs. Alaska Juneau Gold Mining Company.

In the case of the Territory vs. Puget and Alaska Canning Co., cause of action was instituted in Seattle for taxes due the Territory on canning operations for the years 1934, 1935 and 1938. At the time this claim was filed said Company was insolvent and in the hands of a Receiver, and through such Receiver the Territory collected the sum of $3,800.00, which sum was much less than the Territory's full claim, as said cannery was operating without a bond.

In the case of the Territory vs. Ocean Packing Company for delinquent taxes, the sum of $5,451.10 was collected by the Territory.

A suit has been filed, and is now pending, against the Lindenberger Packing Company for taxes on fishing operations for the years 1937, 1938, 1939 and 1940, amounting to over $8,500.00. The outcome of this suit is uncertain inasmuch as the Company was operating without a bond or other security to the Territory.

In the matter of the collection of pack taxes due the Territory from the Diamond K Packing Company for the years 1937 and 1938, the Territory, through the decision of the members of the Board of Administration, agreed to accept a compromise settlement of $7,500.00, which amount was paid by the Pacific American Fisheries, Inc.

In the case of the Territory of Alaska vs. Demmert Packing Company for the collection of taxes due on canning operations for the years 1930, 1931 and 1932, claim was reduced to judgment and subsequently settled.

A suit is now pending in the District Court against the Burnett Inlet Salmon Company for the collection of taxes on fishing operations for the years 1937 and 1938.

Also, a suit is pending in the District Court against the A. R. B. Packing Company for the collection of taxes

on account of fishing operations for the years 1936, 1937 and 1938.

A suit was instituted in the District Court, at Juneau, by the Unemployment Compensation Commission of Alaska against the Lindenberger Packing Company for the collection of percentage contributions due the Commission during the years 1937 and 1938, which were finally paid and the cause dismissed.

In the case of the Unemployment Compensation Commission vs. Juneau Dairies, Inc., for the collection of certain percentage contributions due the Commission for the years 1937, 1938, 1939 and 1940, after issue joined and before hearing, defendants settled and the case was dismissed.

There has been much correspondence and some litigation over escheated property, and many claims have been filed in the Probate Court against the estates of deceased persons who were during their lifetime Territorial beneficiaries, either receiving Old Age Assistance or other help from the Territory.

A cause of action has recently been filed in the District Court for the First Judicial Division against the Alaska-Endicott Mining and Milling Company, a defunct foreign corporation, wherein the Territory seeks to have the property of said corporation, consisting of eleven patented mining claims and one patented homestead, escheated to the Territory of Alaska.

BOARD OF LAW EXAMINERS

The following members constitute the Board of Law Examiners:

James S. Truitt, Ex-Officio Chairman .....Juneau
R. E. Robertson, Member, First Division .....Juneau
O. D. Cochran, Member, Second Division.....Nome
L. V. Ray, Member, Third Division .....Seward
Chas. E. Taylor, Member, Fourth Division....Fairbanks

Two examinations for admission to the bar have been held this year, the first on January 24 and the second on June 26.

Seven applicants were examined in January, four in the First Division and three in the Third Division, where the examination was conducted under the supervision of L. V. Ray, Member of the Board for the Third Division. Six applicants passed this examination and were subsequently admitted to the practice of law in the Territory.

Four applicants were examined in the June examination, all in the First Division, at Juneau, where the examinations were conducted under the supervision of James S. Truitt, Ex-Officio Chairman and President of the Board, and R. E. Robertson, Member of the Board in the First Division. All four applicants passed with creditable ratings and were admitted to the practice of law in the Territory.

Following is a report of the expenditures of the Board of Law Examiners for the present biennium, and may I stress here that the meagre appropriation of $100.00 for the biennium, for the proper functioning of this Board, is entirely inadequate. It would be difficult to set out the time and effort spent by Members of the Board and by the Office of the Attorney General in the necessary research and the preparation of questions required for these examinations, to say nothing of the hundreds of inquiries answered concerning the practice of law and requirements for admission, etc., in the Territory. During the 1929 and 1931 bienniums, this Board was allowed an appropriation of $500.00. If the need for such an appropriation was necessary then, it most certainly can be shown that it is far greater at this time, and should be restored.

Report of Expenditures 1939-1940 Biennium

Amount appropriated	$ 100.00
Expenditures for services of watchers, stenographic services, postage, telegrams, stationery and supplies incident to examination	95.31
Balance 12/31/40	$ 4.69

EXPENSES OF OFFICE

Following is an account of the finances of this office as of December 31, 1940:

	Biennial Appropriation	Amount Expended	Balance
Salary Attorney General	$10,000.00	$8,750.00	$1,250.00
Salary Clerk	5,400.00	4,725.00	675.00
Extra Clerical Assistance	500.00	500.00	.....
Travel Expenses	2,000.00	819.04	1,180.96
Court Costs	2,000.00	455.69	1,544.31
Contingent Expenses	1,500.00	596.34	903.66
Law Books	400.00	400.00	.....

OPINIONS

Status of Filipino Residents in Territory of Alaska.

October 6, 1939

Hon. John W. Troy
Governor of Alaska
Juneau, Alaska

Dear Governor Troy:

Your letter of September 23, 1939, and enclosures, to-wit: Copy of a letter from the Hon. J. M. Elizalde, Resident Commissioner of the Philippines, addressed to the Honorable Secretary of the Interior, Washington, D. C., under date of May 31, 1939; copy of a letter addressed to your Excellency by the Honorable Oscar L. Chapman, Assistant Secretary of the Interior, under date of June 13,

1939, together with certain reports from the Committee on Territories and Insular Affairs, with reference to the bill H. R. 10432 to amend "An Act to prevent aliens from fishing in the waters of Alaska," approved June 14, 1906 (34 Stat. 263), received and considered.

We do not think it necessary to call your attention to the provisions of Section 3 of the Organic Act of the Territory of Alaska (Act of Congress, approved Aug. 24, 1912, Chap. 387, Sec. 3, 37 Stat. 512), which provides in part:

> "The authority granted to the legislature by Section 23 of this title to alter, amend, modify and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal or other general laws of the United States as to the game, fish, and fur seal laws."

Therefore, while we do not have a Territorial statute directly affecting the status of the Filipinos residing in Alaska with reference to their rights to fish in the waters of Alaska for commercial purposes, we do have a statute which it is evident was intended to apply to all who are not citizens of the United States or who have not declared their intention to become such citizens, which statute being Section 3161, Compiled Laws of Alaska, 1933, provides as follows:

> "CITIZENSHIP OF COMMERCIAL FISHERMEN, LICENSES, AND PUNISHMENT: It shall be unlawful for any person to engage in fishing in Alaska who is not a citizen of the United States, or who has not declared his intention to become such, and all persons qualified to engage in fishing, shall first obtain a license so to do under the provisions of this article.
>
> "Anyone violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction shall be punished by a fine of not less than $50.00 nor more than $200.00, or by imprisonment for not more than thirty days, or by both such fine and imprisonment."

You will note that the above quoted statute not only prohibits all who are not citizens of the United States, or

who have not declared their intention to become such citizens, from fishing for commercial purposes in Alaska waters, but requires all such fishermen to secure a license so to do. Hence, with the exception of the right of the Territory of Alaska to impose a license fee for the privilege of fishing in the waters of Alaska, and hunting and trapping therein by Filipinos, the real question that presents itself to me, in view of the provisions of Section 3 of our Organic Act, above cited, and subsequent Congressional legislation on the subject, is, the question of the applicability, at this time, of said Section 3161, Compiled Laws of Alaska, 1933, above quoted, to the Filipino residents of Alaska, relative to their fishing rights or their rights under the game laws of Alaska, to-wit Section 42, Compiled Laws of Alaska, 1933, as construed and in a measure enforced by the Federal Alaska Game Commission. Subsection (c), Section 199, 48 U.S.C.A. as amended February 14, 1931, Chapter 185, Section 7, 46 Stat. 1112, June 25, 1938; Chapter 686, Section 5, 52 Stat. 1171, provides as follows:

> "The Commission, whenever it shall deem expedient, may by regulation require residents of the Territory to procure resident hunting and trapping licenses, authorizing them to take animals and birds protected by this subchapter, and when such license shall have been required of residents, the fees therefor shall be as follows: for each hunting license, the sum of $1.00, and for each trapping license, the sum of $2.00, but no such license shall be required of native Indians and Eskimos, or of residents under the age of 16; PROVIDED, that a licensed trapper shall be entitled to the privilege of hunting without a hunter's license. After the effective date of such regulation, no residents shall take any animal or bird protected by this subchapter without first having procured resident hunting and trapping licenses as herein provided."

Section 207, 48 U.S.C.A., as amended, provides as follows:

> "WHO DEEMED RESIDENTS, WHO DEEMED ALIENS: For the purpose of this subchapter, a citizen of the United States who has been domiciled in

the Territory for the purpose of making his permanent home therein, for not less than one year immediately preceding his claim for resident privileges, or the foreign-born person, not a citizen of the United States, who has declared his intention to become a citizen of the United States, and has been domiciled in the Territory for a like period and purpose, shall be considered a resident; but if such a foreign-born person shall not have been admitted to citizenship within seven years from the date of declaring his first intention to become a citizen, he shall thereafter be deemed to be an alien until admitted to citizenship. A foreign-born person, not a citizen of the United States, who has not declared his intention to become a citizen of the United States, or who has not resided in the Territory for at least one year after having declared such intention, shall be considered an alien. PROVIDED, that whenever the Secretary of Agriculture shall determine that the economic welfare and interest of native Indians or Eskimos and the fur resources of Alaska are threatened by the influx of trappers from without the Territory, he may, at his discretion, and for such periods as he shall determine, require that citizens of the United States, who are not residents of the Territory, and foreign-born persons and aliens within the meaning of this subchapter, shall have resided in Alaska for a continuous period of three years instead of one year before being eligible to obtain resident trapping licenses, under the provisions of this subchapter as amended, and regulations issued pursuant thereto."

From a fair consideration of the said above quoted subsection (c), in connection with Section 207, 48 U.S.C.A., as amended by Act of Congress approved February 14, 1931; Chapter 185, Section 2, 46 Stat. 1111 as amended by Act of Congress, approved June 25, 1938; Chapter 686, Section 2, 52 Stat. 1107, we note that the subjects considered in both statutes above q u o t e d, to-wit, Subsection (c), Section 199, 48 U.S.C.A. as amended, and Section 207, 48 U.S.C.A. as amended, were residents, which brings us to the real status of the Filipino residents of Alaska and their rights and privileges as such residents thereof, though not as citizens of the United States, and

of a class that cannot become such citizens except under certain circumstances not necessary to refer to herein. After having examined and considered many decisions on the subject, we have arrived at what we believe to be the correct status of the Filipino in Alaska, as well as those Filipinos residing elsewhere in the States of the Union, and it is, therefore, the opinion of this office, based on such decisions as we have examined, that the Filipinos residing in Alaska continuously for a period of three consecutive years immediately prior to their application for a fishing or a hunting license, are entitled thereto on the ground of their residence in Alaska, and that the question of citizenship or aliens should not be a bar or any bar, to the granting to such Filipinos a resident license for the purposes above stated, they being residents and not aliens in any sense of the word, and owing their allegiance to the United States.

The above opinion is based on the decisions and opinions we have had occasion to examine and herewith quote:

In the case of Toyota vs. United States, 268 U.S. 407, 60 L. Ed. 1019, we note the following language:

> "Under the treaty of peace between the United States and Spain, December 10, 1898, 30 Stat. 1754, Congress was authorized to determine the civil rights and political status of the native inhabitants of the Philippine Islands, and by the Act of July 1, 1902, Sec. 4, Chap. 1369, 32 Stat. 691, 692, 7 Fed. Stat. Anno. (2d) 1139, it was declared that all inhabitants continuing to reside therein who were Spanish subjects on April 11, 1899, and then resided in the Islands, and their children born subsequent thereto, 'shall be deemed and held to be citizens of the Philippine Islands, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain', according to the treaty. **The citizens of the Philippine Islands are not aliens.** See Gonzales vs. Williams, 192 U.S. 1, 13, 48 L. Ed. 317, 321. They owe no allegiance to any foreign government. They were not eligible for naturalization under Section 2169, because not aliens, and so not within its terms. By Section 30 of the Act of 1906,

it is provided: 'That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.' 34 Stat. 606, Chap. 3592, Comp. Stat. Sec. 4366, 6 Fed. Stat. Anno. (2d) 1001.

"As Filipinos are not aliens, and owe allegiance to the United States, there are strong reasons for relaxing as to them the restrictions which do not exist in favor of aliens who are barred because of their color and race. And in view of the policy of Congress to limit the naturalization of aliens to white persons and to those of African nativity or descent, the implied enlargement of Sec. 2169 should be taken at the minimum. The legislative history of the act indicates that the intention of Congress was not to enlarge Sec. 2169, except in respect of Filipinos qualified by the specified service. Senate Report No. 388, pp. 2, 3, 8. House Report No. 502, p. 1, 4, 65th Cong. Second Session. See also Congressional Record, Vol. 56, pt. 6, p. 6000-6003. And we hold that the words 'any alien' in the seventh subdivision are limited by Sec. 2169 to aliens of the color and race there specified. We also hold that the phrase 'any person of foreign birth' in the Act of 1919 is not more comprehensive than the words 'any alien' in the Act of 1918."

And again we note in the case of DeLima vs. Bidwell, 182 U.S. 247, 45 L. Ed. 1043, the following language:

"The Constitution intended that all the inhabitants of states and territories under the sovereign dominion

of the United States should have the equal protection of the laws and the Constitution,

Bradley J. in Boyd vs. U. S. 116 U.S. 616, 29 L. Ed. 746; Loughborough vs. Blake, 5 Wheat, 324, 5 L. Ed. 100.

"The word 'citizen' has two meanings. It means in the first sense, primarily and properly, the persons exercising political rights, and members of the ruling body politic. In the second sense it is applicable to the whole people of any nation without regard to the former government. Citizenship in the latter sense means simply subject to the allegience of a particular state or nation. In this sense it has precisely the same meanin as the term 'subject',

Storey, Const. Secs. 1932-34, Cooley's Ed. and notes.

"The 14th Amendment, declaring that all persons born or naturalized in the United States and subject to its allegiance are citizens, uses the word in the sense of 'national' or 'subject',

Encyclopedia Political Science. Art. Nationality.

"The natives of Porto Rico and other ceded islands are United States nationals, or, as the learned Attorney General prefers to term them, American subjects. They are subjects or nationals in the same sense that women, minors, and inhabitants of Oklahoma and Arizona are subjects or nationals. Persons in states requiring an educational qualification for voting, who cannot attain to this qualification, are also in this position,

U. S. vs. Wong Kim Ark, 169 U. S. 667, 42 L. Ed. 897."

From Gonzales vs. Williams, 192 U.S. 48 L. Ed. 317:

"The cession of Porto Rico definitely transferred the allegiance of the native inhabitants from Spain to the United States,

DeLima vs. Bidwell, 182 U.S. 1, 45 L. Ed. 1041.

"Aliens are merely foreigners residing or sojourning in the United States. An alien is necessarily a foreigner, and must owe allegiance to another country,

Am. & Eng. Enc. Law, (2d) Aliens, p. 64; Webster International Dict.; 2 Kent Com. 50; Spratt vs. Spratt, 1 Pet. 343, 7 L. Ed. 343; Burrill Law Dict.

"The nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise as may be provided,

Boyd vs. Nebr. 143 U.S. 162, 36 L. Ed. 103.

"The question as to the meaning of the term 'citizen' and what constitutes citizenship under the United States Constitution and laws, must be examined in the light of the English law,

See cases cited.

"The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history,

Smith vs. Alabama, 124 U.S. 478, 31 L. Ed. 512.

"The terms 'citizen' and 'subject' are at present identical in meaning,

See cases cited.

"The general right to life, liberty and property provided for by the Constitution, and more specifically by the ten amendments in favor of civil liberty, applies to all men alike, whether citizens or aliens.

"Subjects may possess varying degrees of civil or political rights.

"The famous case of Scott vs. Sandford, 19 How. 15 L. Ed. 698, held that subjection and citizenship were

not necessarily identical, and that there existed a class of persons in the United States who, although not aliens, were nevertheless not citizens. It was for the purpose of removing from our jurisprudence this class of persons who owed the United States allegiance, and yet were not citizens, that the 14th Amendment defined citizenship,

See cases cited.

"The only other instance in the history of the United States in which subjection and citizenship have not been identical is that of the status of the Indian living apart from his tribe, and who has assumed the habits of civilization,

See cases cited.

"The cession of the territory, its becoming domestic territory with the transfer of the allegiance of its inhabitants, naturalized the natives in the sense that they became passive citizens of the United States, entitled to all the rights, privileges, and immunities of such,

Boyd vs. Nebraska, 143 U.S. 162,
36 L. Ed. 103."

Therefore, we submit the above as our opinion relative to the status of the Filipinos residing in Alaska, and who have resided therein for three or more years.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Rights of Filipinos to Own Real Property in the Territory of Alaska.

November 17, 1939

Hon. J. M. Elizalde
Resident Commissioner of the Philippines
Washington, D. C.

Dear Sir:

Receipt is acknowledged of your letter of November 2, 1939, re the rights of Filipinos to own real property in the Territory of Alaska.

In the absence of a Territorial statute, or any Territorial statute, relative to the rights of aliens to own in fee, lands outside of duly incorporated cities, towns and villages in the Territory of Alaska, we herewith submit the following as the opinion of this office relative to the subject of aliens, recognizing the fact that the Filipino residing in the Territory of Alaska, as well as in the various States of the Union, is not to be designated as an "alien". Therefore, the question of citizenship, residence, and aliens, remains undetermined by the Territory of Alaska, and apparently by the Federal Government. We trust that the time will soon come when the real status of the Filipino in the United States and its Territories may be determined once and for all. At the present time they are designated as "Nationals", but there being a material distinction between the terms "residence" and "citizenship", we believe that a judicial interpretation will be neecssary in the very near future to settle the rights of the Filipino in the United States and in the various Territories belonging thereto.

By reference to the Act of Congress, approved March 2, 1897, Chap. 363, Sec. 2, 29 Stat. 618 (Sec. 72, Title 8, U.S.C.A.), you will note that it provides in substance that any person not a citizen of the United States may acquire and hold lots or parcels of land in any incorporated or platted city, town or village, or in any mine or mining

claim, in any of the territories of the United States. The rights and privileges granted by the statute above referred to have been exercised by aliens of all nationalities since the organization and incorporation of the Territory of Alaska as an incorporated territory of the United States.

The Territory of Alaska has reserved to itself the right to prohibit the employment by the Territory, or any municipality therein, of alien labor of all nationalties, forbidding the alien the right to carry firearms or hunt game in Alaska without first having obtained an Alien Special License; recognized his rights by our Workmen's Compensation Laws, right of employment by duly authorized fishing companies in the waters of Alaska, and the right of dower; and, further, the right to acquire lease-holds on property outside of platted cities, towns and villages, cannot be legally questioned. Bona fide residence is a prerequisite to such rights and privileges. Acquisition of real property under our homestead laws presupposes United States citizenship.

In conclusion, we will state that it is the opinion of this office that any alien, without regard to his nationality, may own real property in any incorporated or platted city, town or village, in the Territory, as above stated, and may alienate the same, at least until office found.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

City Council of Wrangell Without Authority to Appropriate Funds for "Potlatch" or Similar Entertainment.

May 10, 1940

Mr. Harry Sperling
Juneau, Alaska

Dear Sir:

Referring to your inquiry as to whether the Municipality of Wrangell has authority to appropriate city funds to the committee in charge of the Potlatch to be held there some time in June, we will state that,

> "Municipal corporations in Alaska are the creatures of statute, by which their powers are granted, measured and limited. Beyond the limit of the express powers granted and those fairly implied therefrom and incident thereto, they cannot lawfully act or agree to act, and a fair and reasonable doubt of the existence of corporate power is fatal to its being",
>
> Ballaine vs. Town of Seward, 5 Alaska, 734; Town of Valdez vs. Valdez Dock Co., 5 Alaska, 399.
>
> "A municipal corporation has only such powers as are expressly granted, or are necessarily or fairly implied from those granted, or are essential to the declared objects or purposes of the incorporation",
>
> Valentine vs. Robertson, 300 Fed. 521.

There are several more cases to this effect, and, I am, therefore, of the opinion that the City Council of Wrangell cannot lawfully appropriate city funds for the purpose of holding a "Potlatch", fair or similar entertainment, that being without the scope of their authority and powers given under its charter.

Yours very truly,

JAMES S. TRUITT,

Attorney General.

Municipalities Not Authorized to Appoint City Managers.

June 10, 1940

Hon. Ernest Gruening
Governor of Alaska
Juneau, Alaska

Dear Governor Gruening:

I have your letter of June 6th in which you say: "I have been informed that it is perhaps illegal for Alaskan towns to have city managers. Of course I am not a lawyer but I do not see why if a city can hire various other services it cannot hire the services of a manager if it so desires. I would appreciate having your opinion on this."

Your views and reasoning as indicated in your letter are not only complimentary and bottomed on general impressions, but on a common sense view of the rights and privileges of municipal corporations. However, in the absence of a statute specifically, or at least by a fair implication, authorizing incorporated municipalities in Alaska to be governed by city managers, it is the opinion of this office that the government of such municipalities in Alaska must conform to the law authorizing their incorporation. Section 19 of our Organic Act (Act of Congress approved August 24, 1912) authorized, empowered and directed the Committee on Territories to jointly compile, codify, publish and annotate all the laws of the United States applicable to the Territory of Alaska. Such Committee in its compilation, Chapter 21, Compiled Laws of Alaska, 1913, construed Section 9 of the Act of Congress approved August 24, 1912 (our Organic Act) as authorizing the incorporation of municipalities in Alaska, and provided how the same should be incorporated and defined its duties, privileges and jurisdiction. Said Chapter 21, Compiled Laws of Alaska, 1913, was revised and codified by Chapter 97, Session Laws of Alaska, 1923, and that said Chapter 97, Session Laws of Alaska, 1923, now appears as

Chapter 44, Compiled Laws of Alaska, 1933, as amended by Chapter 48, Session Laws of Alaska, 1935, and Chapters 36 and 75, Session Laws of Alaska, 1939, neither of which said amendments are material to the question now under consideration, except that city councils might possibly, by inference, pursuant to the provisions of Section 2381 and Subsection 4 of Section 2383, Compiled Laws of Alaska, 1933, as amended by Chapter 48, Session Laws of Alaska, 1935, provide by ordinance for the election of a board or boards for the management of public utilities rendering service in and for the city. However,

> "A municipal corporation has only such powers as are expressly granted, or are necessary or fairly implied from those granted, or are essential to the declared objects or purposes of the incorporation",
>
> Valentine vs. Robertson, 300 Fed. 521.

> "Towns in Alaska have only such powers as are expressly granted to them by Congress, and such as are necessary to enable them to carry into effect those that are expressly granted",
>
> In re Mauro, 1 Alaska, 279; Valentine vs. Robertson, 300 Fed. 521,

> "Municipal corporations are created to aid the state government in the regulation and administration of local affairs. They have only such powers of Government as are expressly granted them, or such as are necessary to carry into effect those that are granted. No power can be implied, except such as are essential to the objects and purposes of the corporation as created and established",
>
> Town of Valdez vs. Valdez Dock Co., 5 Alaska, 399.

From the foregoing it would appear that there is nothing in our statutes authorizing the appointment of a city manager. Under the present set-up, I doubt if it would work to the best interests of the cities; at best, a manager could be appointed for only one year, and I doubt if anyone qualified and competent to take over and carry on would want to take the chance of working from year to year. In

order to appoint a manager it would be necessary to have a commission form of Government, which is not authorized by law.

Sincerely,

JAMES S. TRUITT,

Attorney General.

Jurisdiction of Public Utility Districts.

January 2, 1940

Hon. Ernest Gruening
Governor of Alaska
Juneau, Alaska

Dear Governor Gruening:

Your memorandum of December 27, relative to the above subject, received and noted, and in reply thereto we herewith submit, for your consideration, our views.

Chapter 71, Session Laws of Alaska, 1935, being our first and only statute authorizing and providing for the incorporation of communities, villages and settlements, outside the limits of incorporated towns and cities in the Territory of Alaska, into Public Utility Districts, we must, therefore, construe the same in accordance therewith, or in such manner as we believe to have been the purpose and intent of the Territorial Legislature in enacting said statute.

Section 1 of said Chapter authorizes settlements of 200 or more inhabitants in the Territory of Alaska, outside the limits of incorporated towns, to incorporate themselves as a Public Utility District; said District when thus incorporated shall not embrace more than 64 square miles of territory.

Section 2 of said Chapter provides, in part, that each Public Utility District organized under the provisions of

said Act shall be and remain under the exclusive management of a board of five directors, who shall be elected by legal and qualified voters of said community or settlement; and the number of such directors required to constitute a quorum to do business, to make contracts, and to obligate such incorporated district in the transaction of its business.

Section 3 provides, in part, how and what procedure is necssary on the part of such community for the incorporation of such district.

Section 4 provides the qualifications of voters at any election authorizing the incorporation of such district, as well as at all subsequent elections in said district relating thereto.

Sections 5 to 13, inclusive, of said Act, relate to taxation and general management of said District, and we do not consider them as being material to your inquiry at this time.

Section 14 of said Act, provides, in part, that the Board of Directors shall have the same power to levy and collect taxes, and to enforce the liens for such taxes against the property thus assessed, etc., as the council of a municipal corporation, and the Clerk of said Board shall have the same duties and powers as the clerk of an incorporated city.

We believe, however, that Section 16 of said Chapter 71, Session Laws of Alaska, 1935, as amended by Chapter 5, Session Laws of Alaska, 1939, will answer the questions propounded to us in your memorandum, and to which we respectfully refer you. Said Board of Directors is duly authorized to make and enter into contracts, and to carry into effect any authority granted in said Section, including the right of said Board to either construct or purchase, or otherwise acquire the necessary real and personal property as may be necessary or convenient in the transaction of its business, and may dispose of the same as it may appear to the best interests of such Public Utility District, and said

Board may legally contract with companies or corporations for the construction and operation of such public works as the Board of Directors may or shall determine to be for the best interests and welfare of the citizens of said District.

Section 17, of said Chapter 71, prohibits the said Directors of such Public Utility District from issuing bonds or other evidence of indebtedness for the construction and operation of any of the public works provided for in the aforesaid Section 16, save and except that indebtedness incurred by the said Board of Directors for the construction and operation of such public works shall not exceed the revenues collected by said Directors from the inhabitants of said District in a sum beyond the current revenues of the District for the year in which the plant or plants constituting the public works may or shall have been acquired or installed. Such indebtedness shall constitute a charge only against the plant or other public works acquired by said Board and may be paid only out of such plant or revenues derived therefrom.

Replying direct to the questions propounded by you, you say: "Will you please inform me what power this board, or any other agency, has to make arrangements for the establishment of an electric light plant there (Kodiak), whether through private or public agencies."

It is the opinion of this office that the rights and authority of said Board of Directors to sue and be sued, to make contracts to enforce or carry into effect any authority conferred under the provisions of Section 16, Chapter 71, Session Laws of Alaska, 1935, as amended by Chapter 5, Session Laws of Alaska, 1939, will give to said Board the legal right to contract or otherwise acquire such necessary light plant for the benefit of said district, and to superintend the operation of said plant whether the same be constructed by said Board or under contract with a private individual, individuals, companies, associations or corporations. The right to contract guaranteed by said

statute, must be construed to embrace all transactions on the part of the Board necessary to the construction, acquisition and operation, of such plant.

To your second inquiry: "Has this board the authority to grant a franchise in Kodiak, either now or if and when it becomes an incorporated town", we would state that inasmuch as the statute above referred to does not specifically refer to the rights of said Board to grant franchises, we are not prepared to say that such rights may be exercised by said Board, but it is the opinion of this office that said Board may, under the provisions of said Section 16 as amended, relating to its contractual powers, and under the further provisions of Subsection 4 of Section 2383, Compiled Laws of Alaska, 1933, as amended by Chapter 48 (4), Session Laws of Alaska, 1935, and Subsection 16 of said Section 2383, Compiled Laws of Alaska, 1933, grant such a franchise.

To your third question: "Has this board of directors legal authority to act as sponsor for a federal project to build a plant", since any advancement of funds by the Federal Government to and for any public enterprise, or project, must meet with the approval of Federal officials authorizing such advancement of funds, we cannot afford to express an opinion as what such officials may or shall hold with reference thereto.

As to your fourth question: "Has this board the power to incur indebtedness in behalf of a plant", we must answer in the negative. (See Section 17, Chapter 71, Session Laws of Alaska, 1935).

And, to your last question: "Can it bond the community", we must also answer in the negative.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

Powers of Public Utility District to Tax Buildings and Improvements on Lands Belonging to the United States.

December 8, 1939

Hon. Clyde Spears, Clerk
Choggiung Public Utility District
Dillingham, Alaska

Dear Sir:

We have received your letter of November 15, 1939, in which you ask if the Utility Board may levy a tax against buildings which have been built on lands belonging to the United States, and if these buildings would be considered as personal property. You further explain that about 90% of the buildings which are included in your Public Utility District are erected on lands belonging to the United States, and that most of the people living thereon are considered "squatters" on the land.

Section 14, Chapter 71, Session Laws of Alaska, 1935, gives to a Public Utility Board of Directors the same powers in the levying and collection of taxes as may be exercised by the Common Council of municipal corporations, as well as all other powers exercised by the Common Council of municipal corporations in Alaska.

The legal right to tax the real property upon which said buildings are situated, must depend upon the contract, lease, or grant, from the Federal Government to the lessees, grantees, or other assignees, constructing or occupying the buildings situated thereon. If said leases or grants contain no conditional sale agreement, or other provisions whereby the title to such property may in time pass to said grantee or lessee, then we must say that the title to said lots or tracts of land remains in the Federal Government, and said real estate or lots upon which said buildings are situated cannot be taxed. On the other hand, if said leases or grants contain provisions whereby the lessee or grantee may at some future time acquire title to said real estate, then, and

in that event, said real property may be taxed as other real property in said town is taxed.

And, further, if the real property cannot be taxed, for reasons above stated, and from your letter we would infer that no such leases or contracts exist, the Public Utility Board can legally tax and should tax at their true value all of the buildings and improvements on all such real property within the incorporated limits of said District, separate and apart from the land on which the same may be situated.

Improvements may be separately taxable to one other than the land owner, where such improvements were constructed pursuant to an agreement creating an ownership in the improvements separate from the fee and lease providing for ultimate purchase of a building by the lessor, or reserving the right of removal of the building by the lessee, or where the fee is subject to easements, and the structures sought to be assessed are appurtenant to such easements and not to the fee. Improvements situated on public streets are subject to taxation,

West Seattle vs. West Seattle Land Co., 80 Pac. 540.

Without continuing this to any greater length, we think you will be able to note our conclusions, to-wit: the improvements made on the property referred to are properly the subject of taxation.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Representatives of Alaska Mutual Beneficial Association Required to Procure Licenses.

June 29, 1939

Hon. Frank A. Boyle
Auditor and Insurance Commissioner
Juneau, Alaska

Dear Mr. Boyle:

Receipt is acknowledged of your letter of June 27, 1939, in which you ask our opinion on the right of representatives of the Alaska Mutual Beneficial Association to represent that Company in soliciting and writing business without first having secured a license, and as to whether mutual beneficial associations are mutual insurance societies, and, as such, would it be necessary for agents representing them to have licenses.

We have heretofore held that the Alaska Mutual Beneficial Association is an "insurance" company, and it is our opinion that any agent soliciting and writing business for the above Association should be required to have a license so to do, and we base our contention on the following:

Beneficial associations resemble mutual companies (insurance) doing business without capital on the assessment plan, but differ from those companies in various respects. The main point of distinction lies in the purpose of their organization. They are usually formed, not as insurance companies, but as social or benevolent associations, insurance being an incident and not the main purpose of the organization, and the insurance feature is adopted, not for the purpose of gain, but with the object of benevolence. Another point of distinction lies in their plan of government, which is usually representative in form; they are ordinarily governed by the lodge system and generally have an initiation and a ritualistic form of work. A third point of distinction lies in the fact that the benefits are usually confined to limited classes of persons: A person

not a member of the society cannot, as a rule, obtain a certificate of insurance; and the member's right to nominate the person to whom death benefits shall be paid is usually limited, either by statute, charter or articles, or constitution, or by-laws, to his relatives, or dependents, etc.

These points of distinction are recognized by statutes specifically authorizing the formation of beneficial societies as distinguished from insurance companies; or specially exempting such societies from the general insurance laws; or imposing special restrictions, duties, and liabilities upon them; or granting them special rights, privileges or immunities. **While these organizations are thus distinct from insurance companies, yet where they agree with their members, in consideration of the payment of dues and assessments, to indemnify them or their nominees against loss from certain causes, such as accidental personal injury, sickness, or death, they conduct an insurance business, and the distinction is in so far without a difference. The certificate issued to the member stands in place of the ordinary insurance policy and is essentially a contract of insurance. On this view, in many states, these societies are deemed insurance companies, and their rights and liabilities are governed accordingly,**

Supreme Lodge K. H. vs. Davis, 26 Colo. 252, 58 Pac. 595; Chartrand vs. Brace, 16 Colo. 19, 26 P. 152; Modern Brotherhood of America vs. Lock, 22 Colo. A. 409, 125 P. 556; Modern Woodmen of America vs. Colman, 68 Nebr. 660, 94 N.W. 814; Thompson vs. Royal Neighbors of America, 154 Mo. A. 109, 133 S.W. 146, **holding that, whether a company is a life insurance company or a mutual benefit association doing business on the assessment plan, it is governed by the laws relating to life insurance companies, and**

not by those relating to benevolent associations,

and the statutory regulations prescribed for insurance companies apply to them, in the absence of statutes specially regulating benevolent or friendly societies with insurance features.

The question whether an association is a beneficial society is ordinarily determined by its object as expressed in its charter or articles and by-laws, its mode of operation, and the nature of the contracts between it and its members. **But the fact that it adopts a name indicative of social or benevolent objects, or that it is described in its charter or articles as a benevolent or friendly society, or that the statutory license to do business as a fraternal beneficial association, does not render it such, if in fact its main object is that of an ordinary insurance company.**

Under the statutes of this nature exempting benevolent societies from the operation of certain insurance laws, the decisions vary as to what is essential to bring an association within the exception, but they are practically unanimous in agreeing that where such associations have an insurance department and the provisions of a fraternal character are eliminated, their primary and only purpose is that of a life insurance organization. Where the whole purpose of an association is to secure to each member thereof the payment, on his death, to his beneficiary or representative, of a certain sum of money, subject to the fulfilment of the conditions imposed by the charter and by-laws, and practically the only qualifications required for membership are that the applicant shall be in a certain condition of health and within a certain age, then such society is an insurance company and bound to comply with the laws governing such.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Tie Vote Results in No Election in Municipal Government.

April 4, 1940

Mr. Chas. W. Tuckett, City Clerk
City of Douglas
Douglas, Alaska

Dear Sir:

Your letter of April 3, 1940, received, and your request noted. You say in your letter:

> "At the city election held in the town of Douglas City, Alaska, on April 2, 1940, the result for Mayor is as follows:
>
> "There was cast 177 votes and the votes for Mayor were as follows: A. E. Goetz 88; Robt. Bonner, Jr. 88, L. W. Kilburn 1.
>
> "Kindly give the council your written opinion on this matter as to just what the Council will have to do to get this matter straightened out.
>
> "Will the city have to have a special election to straighten this matter out?
>
> "Also the present mayor L. W. Kilburn, has been elected at the Apr. 2, 1940 election to the City Council for two years.
>
> "Kindly advise us on this matter so that I will be able to present same to the Council which will meet on Monday, April 8, 1940."

In the absence of a Territorial statute providing for the legal disposition and settlement of the questions presented by you, above quoted, we must resort to other sources and determine therefrom, if possible, how the question submitted can be legally answered. If the question presented pertained to the election of a member or members of the Territorial Legislature, we would find a solution to the question in Section 4 of our Organic Act (Act of Congress approved August 24, 1912), which provides inter alia: "In the event of a tie vote the candidates thus affected shall

settle the question by lot", but since the Organic Act does not refer to the settlement of the question save and except as relates to the question of Territorial legislators, and no reference is made therein relative to the election of municipal officers, we are not authorized to accept its provisions as the law in the settlement of a tie vote in cases of municipal elections. Therefore, we must either accept the provisions of the above cited Organic Act as a basis on which to settle the question of a tie vote, or look to the general laws of elections on the subject of tie votes as construed in a number of the States of the Union by their respective courts. It has been held in a number of such state decisions that where the vote results in a tie and no provisions are made by law for determining who shall be declared elected in such case, there is no election,

> State vs. Adams, 2 Stew Ala. 231; Haggard vs. People, 130 Ill. 211 A; Ison vs. Watson, 169 Ky. 150, 183 S.W. 468; Libby vs. English, 110 Maine, 449, 86 Atl. 975; State vs. Kramer, 150 Mo. 89, 51 S.W. 716, 47 L.R.A. 551; State vs. Gieger, 65 Mo. 306; Bailey vs. Fly, 35 Texas, Civ. App. 410, 80 S.W. 675.

Where two candidates receive the same number of votes and there is no provision of law for determining which shall be declared elected, there is no choice or choosing and, consequently, no election,

> State vs. Stryker, 95 Ohio State, 101, 115 N.E. 1007; State vs. Adams, 2 Stew Ala. 231, above quoted; State vs. Herendon, 23 Fla. 287.

In every case we have examined wherein the tie vote was determined by lot, it was so provided by state statute that such tie vote should be thus settled. Hence, in the absence of a statute specifically authorizing the determining of such question by Territorial statute, it is the opinion of this office that the City of Douglas at its duly authorized

municipal election holden on the 2nd day of April, 1940, failed to elect a Mayor for said city, and, further, inasmuch as the present Mayor was elected to the City Council of said city at said election for a two year term, we are not in a position to say that he, as such Mayor, can legally hold over as such Mayor, for it would be necessary for him to resign one or the other of his official positions, in which event a special election might become necessary to fill such vacancy.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Section 3165, Compiled Laws of Alaska, 1933, as Amended by Chapter 56, Session Laws of Alaska, 1939, Conflicting.

May 20, 1940

Honorable Oscar G. Olson
Treasurer of Alaska
Juneau, Alaska

Dear Sir:

Replying to your written request of some weeks back, and your verbal request of the 18th inst., for my views relative to a reasonable construction that may be given on Chapter 56, Session Laws of Alaska, 1939, amending Section 3165, Compiled Laws of Alaska, 1933, defining the term "resident fisherman", Section 3165, Compiled Laws of Alaska, 1933, provides that "the term 'fishing' as used in this Article means the catching of fish, whether by hook, net, seine or trap. The term 'fisherman' shall mean one whom at the time of applying for a license shall be a bona fide resident of Alaska and shall have been such resident

continuously for at least one year immediately preceding the signing of such application."

Said above quoted Section 3165, Compiled Laws of Alaska, 1933, as amended by said Chapter 56, Session Laws of Alaska, 1939, leaves out the word "immediately" preceding the signing of such application, and adds "and shall have been a bona fide inhabitant of Alaska for at least six months during each calendar year thereafter, and otherwise he shall be considered a non-resident and must pay the license fee of a non-resident fisherman as herein required."

The law requires the applicant to be a bona fide resident of Alaska and to have been such resident continuously for at least one year immediately preceding the signing of such application. The word "continuously" is defined by Funk & Wagnalls New Standard Dictionary of the English Language, at page 569, to mean "connected, extended, as prolonged without separation or interruption of sequence, unbroken, uninterrupted, unintermitted."

Therefore, it is impossible for me to read anything into the amendment that requires a construction, or even a guess, as to what was in the minds of our Legislators in amending said Section 3165, Compiled Laws of Alaska, 1933, as above quoted, for it is evident that said amendment is meaningless. It is certain that if the applicant for a license is required not only to be a resident, but an inhabitant of Alaska, and shall have been such inhabitant continuously for at least one year preceding the signing of such application, we cannot give or assign any reason for the amendment requiring said applicant to state, or be required to state, that he had been a bona fide inhabitant of Alaska at least six months during each calendar year thereafter. We must construe the word "thereafter" to refer to applicant's residence of one year's continuous residence.

It is the opinion of this office that Section 3165, Compiled Laws of Alaska, 1933, should be your guide in collecting license taxes from applicants to fish in Alaska waters.

Yours very truly,

JAMES S. TRUITT,

Attorney General.

Public Health Examinations Applicable to Employees of University of Alaska and All Public Institutions, Whether Territorial or Federal, Serving Food to Patrons or Inmates.

February 24, 1940

Hon. Ralph J. Rivers
United States Attorney
Fairbanks, Alaska

Dear Mr. Rivers:

Your letter of February 9, 1940, relative to the validity and applicability of the provisions of Chapter 7, Laws of Extraordinary Session, 1937, to certain private, public and quasi-public institutions, operating and being operated in the Territory of Alaska, received and considered, and your request for our opinion with reference thereto, noted.

In the first paragraph of your letter you indirectly present the question of the applicability of the provisions of said Chapter 7, Laws of Extraordinary Session, 1937, as applying to the University of Alaska in connection with its lunch room, wherein you say over one hundred to two hundred people take their meals and are thus served by some twenty-five student waiters or waitresses. It is true that the statute under consideration does not specifically mention any institution, place, business or calling, as being

exempt. Therefore, we must accept the statute as it provides, provided, however, we find the same to be unambiguous and within the power of the Territorial Legislature to enact. We have concluded, after a very careful consideration of the provisions of Section 1 of its Subdivisions (a), (b), (c) and (d) of said Chapter 7, as well as many authorities and decisions of courts on the subject of health and sanitation, and not necessary to discuss in detail herein, that said statute is a general statute on the subjects treated and well within the power of the Legislature to enact, and consequently applicable, not only to the University of Alaska, the Pioneers' Home, but to every other institution, business or calling, coming under or within the provisions of said statute, directly or impliedly, operating in the Territory of Alaska.

We do not feel it necessary to call your attention to Section 1661, Compiled Laws of Alaska, 1933, creating the Office of the Commissioner of Health and the appointing of the Commissioner thereunder, or to the provisions of Subsection 7 of Section 1663, Compiled Laws of Alaska, 1933, as amended, authorizing such Commissioner to promulgate rules and regulations for the protection of the health of the public. Hence, his authority to promulgate rules and regulations for the protection of the public health necessarily gives him the right to make such recommendations as he may feel authorized in making to the Territorial Legislature, and based on his recommendations and advice Chapter 7, Laws of Extraordinary Session, 1937, was enacted, and, in our opinion, such statute cannot be legally questioned. It deals with the manufacture of food and drinks, the preparation of food and drinks, and the serving of food and drinks, and provides a penalty for any violation of its provisions.

The protection of the health and morals, as well as the lives of its citizens, is within the police power of the state legislature,

Holden vs. Hardy, 169 U.S. 366, 42 L. Ed. 780.

Whatever rationally tends to promote and preserve the public health is a proper subject of legislation,

Benson vs. Walker, 274 Fed. 622.

We cannot fully agree with you with reference to the second paragraph of your letter wherein you say: "As far as Federal institutions are concerned, such as the Federal Jails, the Territorial Legislature would have no power to interfere with the internal management thereof", citing as your authority Ohio vs. Thomas, 173 U.S. 277. It is certain the Federal Government may furnish food, as well as other necessary supplies, for all institutions under its control and supervision, and pay for the same out of appropriations made for that purpose, but surely the Federal Government would not claim that the state wherein such institutions are located, did not have the legal right to provide by law the physical fitness of those who prepare and serve the food thus furnished and paid for by the Federal Government.

The statute under consideration attempts to protect the public health, not only in the protection of food and drink, but also in the serving of such food and drink, as stated in said statute.

It is the opinion of this office that all corporations, companies, associations, or individuals, manufacturing or producing either food or drinks, or both food and drinks, for public consumption in the Territory of Alaska, as well as those who may necessarily be required to serve the same, whether in the University of Alaska, the Pioneers' Home, or in our Federal Jails, come under the provisions of said statute and may be penalized for any violation thereof. With reference to our penal institutions, we feel certain that the Federal Government would be the first to object to the serving of food and drink to the inmates of its institutions for the incarceration of its unfortunates doing time therein, by persons or individuals known to be infected with any contagious or communicable disease. Without extending this opinion to any greater length, we must hope

that the statute under consideration must be complied with, that, too, without regard to whom the same applies.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

No Charge Is to Be Made for Issuing Certificates of Health to Applicants Therefor by Members of Department of Health.

February 15, 1940

Mr. Frank Chinella, Secretary-Treasurer
Retail Clerks International Protective Ass'n.
Local No. 1392
Juneau, Alaska

Dear Sir:

Your letter of February 5, 1940, has been received and considered, and in reply thereto we do not feel warranted in construing Section 4 of Chapter 7, Laws of Extraordinary Session, 1937, in any manner or way different from the provisions of said Section, to-wit: "No fee or charge shall be imposed by the Territorial Department of Health for carrying out the provisions of this Act".

We have heretofore expressed our opinion and our views relative to the duties of the Department of Health, to the effect that applicants for examination for certificates of health, on presentation to the said Commissioner of Health, are entitled to such examination and certificate to which they may be entitled upon such examination, without charge for such services, and owing to the fact that many like complaints have been made to the various officials in the Territory, and especially to the Board of Administra-

tion, that the said Department of Health was making a charge for such examinations and issuance of certificates in accordance therewith, the Board of Administration, believing that the actual members of the Department of Health were making no such charges for such examinations and issuance of certificates, and that the complaints received by said Board were based upon statements made by applicants for certificates to non-members of the Department of Health, therefore, supplemented certain rules and regulations promulgated by the Department of Health so as to provide that the employer shall pay for the health examinations required, and set the fee therefor at the sum of $2.50. The Board, at the time the question was considered, was assured by the Department of Health that it had not and would not make any charge whatsoever against those applying for such examination and certificate directly to the Department, or any member thereof.

Therefore, we feel from the facts that we have in our possession, that the Department of Health is not authorized to charge any applicant a fee, or any fee, for such examination and the issuing of the required certificate. It was the purpose of the Board of Administration when supplementing such rules and regulations as promulgated by the Department of Health, as above stated, to require employers to pay for such examinations and issuance of certificates to their employees in the event they sought such examination and certificate from a physician who is not, and was not, a member of the Department of Health.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Liability of Territory for Damages Arising from Construction of Flood Control, River or Harbor Improvement.

September 19, 1939

Hon. Leslie Nerland
Fairbanks, Alaska

Dear Mr. Nerland:

Your letter with reference to the provisions of Chapter 73, Session Laws of Alaska, 1939, re the liability of the Territory for damages caused to any individual, firm or corporation in the Territory, arising from the construction of any flood control, or river or harbor improvement, has been called to my attention.

As we understand the provisions of Chapter 73, Session Laws of Alaska, 1939, after a careful consideration of same, it appears self-evident that the purpose of said statute was to provide for a full and complete cooperation with the Federal Government in all matters pertaining to the construction of Federal projects in the Territory, which, when thus constructed, shall be considered strictly Territorial, that is to say, river and harbor projects, which, when once constructed, their future maintenance becomes strictly a Territorial obligation, and for which the Federal Government is in no wise responsible, and that the same must be maintained by the Territory at its own proper cost and expense so long as the need for such improvement shall be required.

Municipalities have the right of eminent domain in securing easements and rights of way for a distance of 30 miles in any direction from the corporate limits of such municipality, and under the provisions of Section 5 of said statute is required to provide at its own proper cost and expense all necessary easements and rights of way for the construction of such river and harbor improvements, and to certify the same to the Federal Government before it

shall commence the construction of any such project or projects.

Damages accruing to property owners adjacent to or subsequently caused by reason of the construction of such project or projects shall be individual and personal to such property holder and owner thereof, and he will be required to submit his claim for such damages, after the same may or shall be sustained, to the Territorial Board of Administration, and such submission and the Board's decision thereon will be personal and precedent to an action at law for such damages. If, however, in securing such easements or rights of way for the construction of such project either by right of purchase or condemnation, and the owners of property adjacent thereto or likely to be damaged by reason of such construction can be induced or prevailed upon to waive any right of present, as well as subsequent damages, that they might possibly sustain by any subsequent overflow or inundation of their property which shall be directly caused as the result of such improvement, it would be well to secure such waiver at the time of securing such easement or right of way, but if the same cannot for any reason be acquired as above stated, I do not feel that the construction of such project by the Federal Government should be delayed on that account for the very good reason that the Territory of Alaska, pursuant to the provisions of said statute, has obligated itself to respond in damages as therein provided, which damages, of course, to any property holder now within the area likely to be affected by reason of such construction, cannot be pre-determined.

Therefore, it is the opinion of this office that such improvements should be proceeded with as soon as possible after the acquisition of easements and rights of way shall have been acquired, and subsequent resultant damages to property holders, caused by reason of such construction,

adjusted at the claim of such property holder as the statute provides.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Three Per Cent Tax on Gold Mined Under Lease Contract Must Be Paid by Lessee; If on Royalty Basis Lessor Must Also Pay Tax.

January 10, 1940

Mr. A. A. Shonbeck
Anchorage, Alaska
Dear Art:

Your letter of January 4, 1940, received on this day's mail, and your request noted.

That portion of your letter quoting a certain clause in the contract between you as the lessee, and certain other parties, not named, as lessor or lessors, needs no technical construction by this office as the same is not ambiguous in any sense whatever. It is a universal rule of construction that in the absence of ambiguity, a court has no occasion to invoke rules of interpretation in construing a contract, but if the contract is clear, certain and definite, its terms must be accepted without reference to any rules of interpretation, since courts have no right to make a contract for the parties different from that actually entered into by them, and inasmuch as the quoted clause of your contract is plain, there can be no need for an interpretation of the same by me.

Chapter 20, Session Laws of Alaska, 1937, provided for a gold tax of 3% upon the cash value of the gross production on all gold, platinum, osmium, irridium, and other

metal or minerals belonging to the platinum or palladium group mined in the Territory of Alaska during any one year in excess of $10,000.00.

Prior to the amendment of the above designated Chapter of our laws by Chapters 54 and 62, and, also, Chapter 67, of the Session Laws of Alaska, 1939, which we shall hereafter refer to, said Chapter was submitted to this office on a number of occasions with a request for an interpretation relative to almost the identical question submitted by you. The synopsis of our opinion given to each inquiry is, as follows:

The miner actually mining the minerals, subject to the tax imposed by said Chapter 20, Session Laws of Alaska, 1937, under a lease contract, or under an option to purchase, must, at the close of his season, first, deduct the royalties agreed to be paid under his contract, whether the same be by lease or option to purchase; then, deduct his exemption of $10,000.00, pursuant to said statute, and then pay to the Territory of Alaska 3% on all remaining sums held by him. The lessor or grantor, on a royalty basis, is as much a miner as the man who actually mines the minerals. The lessor or grantor, on a royalty basis, is not entitled to any exemptions whatsoever, but must pay 3% tax on all royalties received by him, whether from one mine or many mines.

Chapter 54, Session Laws of Alaska, 1939, amended Chapter 20, Session Laws of Alaska, 1937, to read as follows: "Taxes upon royalties shall be paid by the person receiving same and no deduction or exemption is allowed thereon." Therefore, you will note that our opinion rendered prior to the enactment of said Chapter 54, Session Laws of Alaska, 1939, was confirmed by said Chapter 54.

Hence, replying direct to your question, it is the opinion of this office that you pay to the owners of the mining property leased by you, **first**, the royalty due such owner, and **second**, you will deduct your exemption, of $20,000.00, and then pay to the Territory of Alaska its 3% on all

balances remaining; the owner or receiver of such royalties will also pay to the Territory of Alaska 3% thereon, without any deductions or exemptions on the same. As to how such royalties received by such owner shall be credited with reference to the purchasing price of said mine or mines, must be governed by your contract.

Chapter 67, Session Laws of Alaska, 1939, also amends Chapter 20, Session Laws of Alaska, 1937, by adding Sections 3 and 4 thereto, making all license taxes due December 31 of each year, and Section 4 provides for interest on delinquent taxes and that all property owned or operated is subject to a lien in favor of the Territory.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Territorial Board of Education Is Without Authority To Exclude Children Over 16 Years of Age From Attending School Because of Unsatisfactory Grades, if Said Child Desires to Attend.

October 17, 1940

Honorable Anthony E. Karnes

Commissioner of Education

Juneau, Alaska

Your letter of yesterday received and I take it for granted that you have given due consideration to our statute making public school attendance compulsory, to-wit, Section 1351, Compiled Laws of Alaska, 1933, as amended by Chapter 18, Session Laws of Alaska, 1937, which provides, in part, as follows:

> "Every parent, guardian or other person in the Territory having the possession or control of any child

between seven and sixteen years of age, shall cause such child to attend the public schools of the district in which the child resides, for the full time during which such school may be in session, or to attend a private school for the same time, unless the mental or physical condition of such child is such as to render attendance inexpedient or impracticable, or such child has been excused for other cause by an excuse in writing signed by a majority of the school board, until such child has either reached the age of sixteen years or completed the eighth grade * * * ."

The law above referred to has no application to the parent, guardian or other person having the custody of such child or the child when it shall have reached the age of sixteen years and shall have completed the eighth grade. A further attendance of such child in the public schools appears to be optionary with the child. In the absence of any specific authority, I very much doubt the right of a local school board, or the Board of Education, to exclude any child by rule or regulation on the ground that he has long since passed his sixteenth birthday and completed the eighth grade, has attended high school for a period of two years and during which high school attendance has made no advancement. His desire to attend and his attendance we do not think can be legally questioned. Neither the local school board or the Board of Education is legally authorized to pass upon the mental condition of such pupil. We have a legal procedure by which mental conditions may be determined.

However, it is the opinion of this office that local school boards, as well as the Board of Education, should be given the authority to hear and determine such cases as you present in your letter, and that the school board should present the same in the form of a bill to the Legislature.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Payment of Tuition by Territory for Pupils Attending Public Schools in Districts Other Than District in Which They Reside.

September 17, 1940

Honorable Anthony E. Karnes
Commissioner of Education
Juneau, Alaska

Dear Mr. Karnes:

I have your letter of even date herewith in which you say: "A few years ago you rendered the opinion that we could not pay tuition for pupils attending the Seward School, when they passed by the Bayview School (formerly called the Mission School), to go to the Seward School. Since then we have disallowed tuition on these pupils."

At the time we rendered our opinion the "Mission School" was a Territorial school maintained and conducted as such, and, therefore, eligible pupils residing in the Bayview School District should necessarily be required to attend such school, provided said school provided the grades required for such pupil or pupils. Hence, the Territory should not be required to pay tuition simply because such pupils would prefer to attend, or their parents would prefer to have them attend, the Seward School. The Bayview School was established for the benefit of those pupils residing within the district and maintained by the Territory.

You further say: "Last year the Bayview School was operated by the Office of Indian Affairs, but we again disallowed the Seward School tuition," and, further, "The officials of the Seward School believe they should have this tuition, stating that it is their 'understanding that the Bureau of Indian Affairs do not take white children' if there is a Territorial School in the vicinity."

Taking it for granted that the Bayview School is now under the control and operation of the Federal Government, to-wit, Bureau of Indian Affairs, we still cannot

accept the unsupported belief of the Seward School officials to the effect that they, said officials, "understand that the Bureau of Indian Affairs do not take white children" if there is a Territorial School in the vicinity. Under the Act of Congress approved March 3, 1917, Section 170, Title 48, U.S.C.A., as amended, provides that "The Legislature of Alaska is empowered to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized life in said Territory, and to make appropriations of Territorial funds for that purpose." It is common knowledge that the Territory is now maintaining schools for white children and children of mixed blood in many places.

Therefore, it is the opinion of this office that unless the Bureau of Indian Affairs has contracted with the Territorial Board of Education under and pursuant to said Section 170, Title 48, U.S.C.A., as amended by the Act of Congress approved May 14, 1930, it, the said Bureau of Indian Affairs, cannot legally object to white children living in and adjacent to the Bayview School attending said school, and it is the duty of said Bureau to accept said white children in said school and give to them the same consideration required of other public schools in the Territory maintained in whole or in part by Federal or Territorial funds, provided there be room for such child or children, and, further, it is the opinion of this office that any Indian child, or children of mixed blood, may attend any public school in the Territory of Alaska, provided there be room for such child or children, and we know of no valid reason why the rule should not work both ways.

Yours very truly,

JAMES S. TRUITT,

Attorney General.

Additional License Fee Required of Dentists to Practice Their Profession by Dental Board Not Legal.

Hon. Oscar G. Olson
Territorial Treasurer
Juneau, Alaska

Dear Mr. Olson:

Relative to that certain letter addressed to you by the Honorable Harry O. Arend, Assistant United States Attorney, of Fairbanks, Alaska, under date of November 22, 1939, and by you delivered to this office, relating to license fees required of dentists practicing their profession in Alaska, has been considered.

The provisions of Section 1128, Compiled Laws of Alaska, 1933, providing for registration and license fee required of dentists practicing in Alaska, and Subsection 1st (a) of Section 3138, Compiled Laws of Alaska, 1933, have been noted by this office prior to the receipt of the above letter.

The Doctor's claim of discrimination in the taxing power of the Territorial Legislature is without merit and needs no further consideration here, but the question of double taxation through a system of licensing is worthy of consideration, since the Dental Board, under the provisions of Section 1128, Compiled Laws of Alaska, 1933, is authorized to collect an annual license from all dentists practicing in Alaska, and under the provisions of Section 3138, Compiled Laws of Alaska, 1933, the Territory is authorized to collect an annual license from such dentists also, and all such fees or licenses thus collected are required to be paid into the Territorial Treasury. Therefore, the question of double taxation is one that may be of importance.

We presented the question to the President of the Board of Dental Examiners, namely, Dr. Geo. F. Freeburger, of this city, and he assured us that he collected

from all dentists practicing their profession in Alaska, the annual license fee required under the provisions of Section 1128, and that such license fees thus collected were, by the Board, paid into the Territorial Treasury. Hence, what may be considered double taxation and prohibited, and what may not be thus considered double taxation and permissible under the law, appears to me to be the only question to be determined.

Therefore, we will give a synopsis of our views on the subject of double taxation, or duplicate taxation, basing the same on the ground that privilege, occupation, license and property taxes are synonymous terms and may be legally designated as taxes regardless of name.

Section 9 of our Organic Act provides, in part, as follows: "All taxes shall be uniform upon the same class of subjects, and shall be levied and collected under general laws," which we may construe as being applicable by implication to the subject under consideration.

It is the opinion of this office that under the provisions of the Fourteenth Amendment to the Constitution of the United States, as construed by Section 51, 37 C.J. 197, and which reads as follows: "Under the Fourteenth Amendment of the Federal Constitution, which prohibits the denial of equal protection of the laws, and similar provisions in the state constitutions, license taxes imposed must bear equally and uniformly on all persons and subjects embraced in the same class, and in similar circumstances, and in some jurisdictions occupation taxes are expressly required to be equal and uniform by express constitutional provision. If the tax is imposed by direct state legislation it must be general in its application so as to be uniform as a state tax * * * ", and,

Section 62, 37 C.J. 209, 211, which reads, as follows: "Under a constitutional provision against double taxation one license or occupation tax only can be imposed by the same branch of the government, at the same time on a person who pursues but one business or avocation, and,

when a license tax to do a general business has been exacted, another license tax cannot be imposed for the doing of a particular act or series of acts constituting an integral part of such business. * * * An occupation tax will ordinarily be presumed to be the only tax on such occupation; and, unless a different intent plainly appears, it will be held that an act or ordinance imposing occupation taxes or licenses was not intended to subject the same business to double taxation or license for the exercise of the same privilege";

That taxing by way of licensing an occupation to be carried on at any one place during any one year, presupposes but one annual license, and that any additional license imposed for such occupation or privilege would constitute double taxation in violation of the aforesaid Fourteenth Amendment to the Constitution of the United States.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

Employees of Pioneers' Home Not Exempt From Paying School Tax.

April 20, 1940

Hon. Frank A. Boyle
Auditor of Alaska
Juneau, Alaska

Dear Mr. Boyle:

We have received your letter of April 19, 1940, in which you have enclosed a letter directed to you by Honorable Eiler Hansen, Superintendent of the Pioneers' Home, concerning the collection of School Taxes from employees

of the Home. Mr. Hansen asks whether or not the amount due from employees of the Home is properly deductable from their salaries.

On examination of the statutes in such cases made and provided, to-wit, Section 3123, Compiled Laws of Alaska, 1933, we fail to find that the employees of the Superintendent of the Pioneers' Home come within the class designated as being exempt from taxation under said above designated Section of our statutes, and we further find under Section 3127 of said statutes that it shall be the duty of every person subject to such tax to pay the same to the school tax collector within the time specified in the notice mentioned in Section 3126, and, under the provisions of Section 3130, Compiled Laws of Alaska, 1933, that a failure to pay such tax by all those required under the statute to pay the same will subject such person or persons to the penalties mentioned in said Section. Under the provisions of Section 3132, Compiled Laws of Alaska, 1933, we note that employers are liable for employee's tax, and it becomes the duty of the employer to furnish to the school tax collector, on demand, a list of all employees in his or its service.

Therefore, inasmuch as the class of employees referred to by Mr. Hansen are not included under the provisions of the aforesaid Section providing for exemption, it is the opinion of this office that such employees should be required to pay their School Tax pursuant to the law, and in the event they fail to do so it becomes the duty of the employer to deduct such tax from the wages of each of its employees so liable.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Record of Birth of Illegitimate Child May Be Amended To Meet Facts in Case.

January 31, 1940

Hon. Frank A. Boyle
Registrar of Vital Statistics
Juneau, Alaska

Dear Mr. Boyle:

Your letter of January 30, 1940, in re one Teddy Roe-Doe, received and considered.

It is evident that under the provisions of Section 1188, Compiled Laws of Alaska, 1933, you have absolutely no authority to change the record filed in your office relative to the birth of one Teddy Roe, the illegitimate child of one Mary Roe, born on February 9, 1937, and which record was filed in your office under date of January 26, 1938.

Under the provisions of the statute above referred to, upon the marriage of the said Mary Roe and the said John Doe, and the acknowledgment by them that the said John Doe was admittedly the father of said child, the same became a legitimate child of its said parents to all intents and purposes, and while we have no direct statute whereby the name of said child can or could be changed save and except that the same be accomplished under the provisions of Section 1141, Compiled Laws of Alaska, 1933, it is the opinion of this office that on a petition filed by the parents of said child before the United States Commissioner in and for the precinct wherein they reside, that said child may be legally adopted and its name legally changed from that of Teddy Roe to that of Teddy Doe. However, both parents must recognize and make sworn statements as to the illegitimacy of said child at the time of its birth and of their subsequent marriage, and that the petition filed by them was filed not only for the purposes of adoption, but for the purpose of changing the child's name from that of Teddy Roe to that of Teddy Doe, the true heir of the said Mary Roe and John Doe, and that said petition

pray for a supplemental order and judgment of said Commissioner perfecting said change and authorizing the supplemental amendment of the record of vital statistics in the Territory of Alaska.

While this procedure, we admit, to commence with, may well be questioned from a legal standpoint, still and yet we know of no valid reason why the record of birth in your office should not be thus amended to meet the facts in the case. We repeat, otherwise you have no authority to change the record made by you pursuant to the Certificate of Birth filed in your office by the said Mary Roe.

A name is only a label or trademark by which a person is identified and distinguished from other persons. If parents are dissatisfied with the first name they gave the child they need only to discontinue using it and adopt another, and the same is true of the surname as of the Christian name. It is merely a custom for persons to assume the name of their parents, but it is not obligatory nor punishable to adopt another name.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Grandson May Legally Marry Adopted Daughter Of Grandfather.

January 12, 1940

Hon. Frank A. Boyle
Auditor of Alaska
Juneau, Alaska

Dear Mr. Boyle:

Your letter of January 9, 1940, received, and your request noted.

You say that the following question has been presented to you: "Can a grandson marry the adopted daughter of his grandfather?" Then you proceed to correctly quote Subsection 2 of Section 1182, Compiled Laws of Alaska, 1933, which Section relates wholly to marriages that are prohibited by law, to-wit, (1) when either party thereto has a husband or wife living at the time of such marriage; (2) when the parties thereto are related to each other within, and not including, the fourth degree of consanguinity, whether of the whole or half-blood computed according to the rules of the civil law.

Therefore, the correct answer to the question submitted by you must be based and determined under and in accordance with Subsection 2 of the aforesaid Section 1182, relating to the degree of consanguinity. The correct definition of the word or term "consanguinity," as used in said Subsection 2 of said Section 1182, will answer your question. Consanguinity is a derivative of the Latin word "consanguis," and means "blood together."

Hence, there admittedly being no blood relation existing between the contracting parties, there can be no legal objections to such a marriage contract under the rules of either the statute, canon, or civil law. There can be no question with reference to the status of an adopted child, as it becomes the legal heir of its foster parent or parents, and to all intents and purposes insofar as the law of inheritance may be involved, but certainly not to the extent of creating blood relation between such adopting parent and his adopted heir.

Without pursuing the question further as to the rights of the adopting parent and the adopted child, it is the opinion of this office that such a marriage contract between the parties mentioned and referred to, cannot, on the grounds and for the reasons above stated, be legally

prohibited, there being absolutely no blood relation between the contracting parties.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Subordinate Employees of Legislature are Subject to Provisions of Chapter 51, Session Laws of Alaska. 1935.

January 10, 1939

Hon. Harry G. Watson
Secretary to the Governor
Juneau, Alaska

Dear Mr. Watson:

Receipt of your letter of yesterday acknowledged, and your request for our views relative to the employment of subordinate officials by the Territorial Legislature for the present session of that body, noted.

You state that there appears to be some discussion centered around the proposition of employing persons whose husband or wife is regularly employed or engaged in gainful occupation, yielding him or her an average income of $200.00 or more per month, and further that it becomes the duty of the Governor of Alaska to disburse the funds for the salaries of the legislative employees from Federal funds appropriated by the Congress of the United States, and that you would like to have our opinion as to whether or not the Governor may pay from Federal funds an employee who may come within the scope of Chapter 51, Session Laws of Alaska, 1935.

The statute referred to, namely, Chapter 51, Session Laws of Alaska, 1935, provides as follows:

"Section 1. No executive, judicial, ministerial or other officer or employee of this Territory, or of any municipality, school district, road district, or other legal subdivision thereof shall appoint or employ, or vote for the appointment or employment of any person whose husband or wife, as the case may be, is regularly employed or engaged in gainful occupation yielding him or her an average income of Two Hundred Dollars or more per month. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars, nor more than Five Hundred Dollars, and the officer or employee so offending shall be discharged from his office or employment and thereafter shall not be eligible to office or employment for the period of one year.

"Section 2. Any officer or employee of this Territory or of any municipality, school district, road district or other legal subdivision thereof who pays out of any public funds or fees under his control, or who draws or authorizes the drawing of any warrant or authority for the payment out of any public funds or fees, of the salary, pay, or compensation of any person offending as provided in the preceding section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be discharged from his office or employment and shall be fined as provided in the preceding section and thereafter shall not be eligible to office or employment for the period of one year."

Section 1462, Title 48, U.S.C.A. entitled "Subordinate Officers of Legislature" provides that "The subordinate officers of each branch of said Territorial Legislatures shall consist of one chief clerk, who shall receive a compensation of $6.00 per day; one enrolling and engrossing clerk at $5.00 per day; sergeant-at-arms and doorkeeper, at $5.00 per day; one messenger and watchman, at $4.00 per day each; and one chaplain, at $1.50 per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any Territory."

Section 75, Title 48, U.S.C.A. authorizes each body of the Legislature of the Territory of Alaska to elect the

subordinate officers provided for in said Section 1462, above quoted.

Therefore, we must presume that if the Territorial Legislature had the right to elect its subordinate officers, we must necessarily conclude that the branch of the Legislature employing such subordinate officers must be construed as a "superior." And, further, we believe that said Section 83, Title 48, U.S.C.A. distinguishes between Territorial officials and Federal officials, as said Section provides that no person holding a commission or an appointment under the United States shall be a member of the Legislature, or shall hold any office under the Government of the Territory.

The legal definition of a legislative officer is one whose duties relate mainly to the enactment of laws, such as members of Congress and of the several state legislatures. These officers are confined in their duties by the Constitution generally to make laws. (See Bouvier's, 1934 Ed. p. 870).

For the reasons above stated, we can arrive at but one conclusion, to-wit, that all members of the Territorial Legislature are Territorial officials, notwithstanding the fact that they are paid for their services, as well as their mileage to and from the capital, by the Federal Government; that fact alone, we do not believe can be so construed as to make such legislators, or other subordinate employees, Federal officers.

We, therefore, conclude that for your protection an affidavit made by such subordinate employee of the Legislature should be filed in your office, unless we concede such subordinate employees to be employees of the Federal Government. We cannot at this time advise you, or the Territorial Legislature now in session, to ignore the provisions of Chapter 51, Session Laws of Alaska, 1935, or

to set the same at naught. If this statute is not to be complied with, we would suggest its repeal.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

Territory's Right to Collect Taxes.

December 17, 1940

John E. Pegues, Executive Secretary
Alaska Planning Council
Juneau, Alaska

Dear Sir:

I herewith submit the following excerpts relative to the subject of taxation in the Territory of Alaska, for your consideration and the consideration of Honorable Ernest Gruening, Governor of Alaska:

Revenue for the necessary support of the Government, either National, State, Territorial or Municipal, may be legally assessed, levied and collected, under and pursuant to legally enacted statutes by the respective legislative bodies in the Nation, State, Territory, or by Municipalities. Such revenues may be designated as a property tax on an ad valorem basis; an excise or license tax based on privileges; an inheritance tax based on assets of deceased persons; a sales tax based on business transactions, and an income tax as an indirect tax on income and personal property, privileges, occupations and earnings. Therefore, without further reference to name or method of assessing or collecting the same, all such revenues are taxes.

Hence, in providing for such necessary revenues we must remain within the legal boundaries prescribed by our

National, State, or Territorial Organic Acts. The Territory of Alaska in providing revenue for the support of its government must be governed by its Organic Act (Act of Congress approved August 24, 1912) and its limitations. Section 3 of said Organic Act provides that the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska, shall continue in full force and effect until amended or repealed by Act of Congress, and that except as therein provided all laws in force in Alaska prior to that date, shall continue in full force and effect until altered, amended, or repealed by Congress or by the Legislature. The authority granted to the Legislature to alter, amend, modify and repeal, laws in force in Alaska shall not extend to the Customs, Internal Revenue, Postal, or other general laws of the United States, or to the Game, Fish and Fur Seal laws, and laws relating to Fur-bearing Animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to Sections 41, 47, 161 to 169, inclusive, 321 to 325 and 329 of Chapter 2, Title 48, U.S.C.A. The above provisions shall not operate to prevent the Legislature from imposing other additional taxes and licenses. It is certain that under the provisions of said Section 3 of our Organic Act and the decisions in the cases of Haavik vs. Alaska Packers, 263 U.S. 510, Alaska Pacific Fisheries vs. United States, 248 U.S. 78, Alaska Fishing, Salting and By-Products Company vs. Smith, 255 U.S. 44, the Territorial Legislature may impose taxes or licenses for the support of the Territorial Government, and in imposing such tax or license it may discriminate, that is to say, it may prefer residents of Alaska as against non-residents in granting fishing privileges,

Anderson vs. Smith, 71 Fed. (2d) 493.

In the above case, the Court says: "It is clear that by Section 3 of the Organic Act, Congress authorized the Territorial Legislature to determine what additional license fees should be paid for the privilege of fishing within the Territorial waters of Alaska, and to discriminate between residents and non-residents in that regard, although the determination of a license fee and the conditions, places and times of fishing were reserved by Congress."

Section 9 of our Organic Act provides, in part, that: "No taxes shall be imposed upon property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents," and said Section 9 further provides that "All taxes shall be uniform upon the same class of subjects, and shall be levied and collected under general laws, and the assessment shall be according to the value thereof. No tax shall be levied for Territorial purposes in excess of one per centum of the assessed valuation of property therein in any one year; nor shall any incorporated town or municipality levy any tax for any purpose in excess of two per centum of the assessed valuation of property within the town in any one year." It is evident that the above quotations limit the power of our Legislature in assessing and levying taxes on an ad valorem basis, but do not limit the Territorial Legislature from laying an excise tax on business privileges and occupations, or prohibit the Territorial Legislature from classifying business privileges and occupations, and to discriminate as between classes in levying such excise tax, provided that such discrimination must be by class as a whole and based on reasonable grounds. An income tax may be legally construed as a license or excise tax.

Hale vs. Iowa State Board of Assessment, 302 U.S. 95.

From our viewpoint it is not material whether we call the tax an income tax, or by any other one of the various names under which revenues for the support of the Government may be called (except as to direct taxation). It

is either a license or privilege tax, which, under the decision of the United States Supreme Court in the case of Hale vs. Iowa State Board of Assessment, above cited, is an excise tax, for it is certain that direct taxes within the meaning of the Constitution are only capitation taxes or taxes on real estate,

William M. Springer vs. United States, 102 U.S. 586.

It is also certain that Alaska may legally impose both a capitation tax and a real estate tax as direct taxation, and an indirect tax on all other sources of income from whatever source not specifically and legally exempted. The only serious question to be determined is: Can the Territorial Legislature enact a legal statute discriminating between the resident and non-resident of Alaska with reference to the imposition of taxes in other matters besides fish, fur and game. We believe that the decisions of the Court in the cases of Haavik vs. Alaska Packers, 263 U.S. 510, Alaska Pacific Fisheries vs. United States, 248 U.S. 78, and Alaska Fishing, Salting and By-Products Company vs. Smith, 255 U.S. 44, above cited, to be decisive as to our rights to discriminate with reference to the question of discrimination in those cases determined, but being to date unable to cite a single decision, or any decision, of a court of last resort, holding that such discrimination is permissible in other matters not enumerated in said cases above cited, either directly or by inference, we face a very serious legal question that remains, to date, undetermined by the Courts on the one specific question, and unless we accept the decision of the Court in the above cited cases relating to fishing privileges and licenses governing same, we are met face to face by the decision in the case of Travis vs. Yale & T. Mfg. Co., 252 U.S. 60, 64 L. Ed. 460, in which the Court says: "When a general taxing scheme denying to all non-residents, without special reference to citizenship, certain exemptions, is discriminating against all non-residents, and has the necessary effect of including in the discrimination those who are citizens of other states, and where there can be no reasonable ground for the diver-

sity of treatment, it abridges the privileges and immunities to which said citizens are entitled." Unless we can legally classify the citizen-residents in one class, and the non-citizen transients in another class, and thereby discriminate as between the two classes, we are convinced that an income tax will not meet our wishes or desires to force the transient element who annually come to, and reap their harvest in, Alaska, and then return to the States to wait another season, to contribute to the support of the Territorial Government. We must bear in mind that an income tax is a tax relating to the product of income from property or from business pursuits, a tax on the yearly profits from property, professions, trades or offices, or is a tax on a person's income, emoluments, profits, and the like. While there is authority to the contrary, the view more generally taken by the Courts, is that an income tax is not a tax upon property, but is more nearly within the category of excise taxes,

61 C.J. 1559-1560, Section 2306, and notes.

An excise tax is an indirect charge for the privilege of following an occupation or trade, or carrying on a business, while an income tax is a direct tax imposed upon income, and is as directly imposed as a tax on real estate,

United States vs. Philadelphia, B. W. R. Co. 262 Fed. 188.

Therefore, we conclude that an excise tax, or license tax, will meet the Treasurer's requirements for revenue to support the Government, provided that the collection of such taxes be enforced and that our present statutes with reference to the levying, assessing and collecting of such revenue be either rewritten, or so amended that such collections may be enforced.

Sincerely yours,

JAMES S. TRUITT,
Attorney General.

Administration and Payment of Mothers' Allowances Belongs in and Under Department of Public Welfare.

January 15, 1940

Hon. E. L. Bartlett
Acting Governor of Alaska
Juneau, Alaska

Dear Governor Bartlett:

Your letter of January 12, 1940, received, and your request for an opinion of this office relative to the duties and authority of the Department of Public Welfare in the Territory with reference to the payment of Mothers' Allowances, considered.

The Department of Public Welfare for the Territory was created and subsequently established under the provisions of Chapter 3 of our Extraordinary Session of the Legislature in 1937, and Subsection (a) of Section 1 of said Chapter 3, provides that "Welfare Department" means the Department of Public Welfare for the Territory created by this Act, and Subsection (b) provides that "Assistance" means money payments to qualified persons, and Subsection (c) provides that the "Welfare Board" means the Board of Public Welfare for Alaska.

Section 3 of said Act, correctly quoted by you, provides that "The Welfare Department is empowered, directed and authorized (a) to administer old age assistance, aid to dependent children and to blind persons, and such other relief to the destitute as may be assigned to it; and to receive and expend all funds made available to the Department by the Federal or Territorial Government."

It appears from your letter and from our verbal discussion of the subject, that the administration of Mothers' Allowances are now and have been at all times since 1929, administered by the Governor of Alaska under the provisions of Chapter 65, Session Laws of Alaska, 1929; Sec-

tion 15 of which said Chapter being Section 1791, Compiled Laws of Alaska, 1933, provides, among other things, that the Governor is vested with entire and exclusive superintendence of the poor, etc. Hence, it appears that the office of Governor has wholly failed to consider the amendment to said Section 15 of Chapter 65, Session Laws of Alaska, 1929, (same being Section 1791, Compiled Laws of Alaska, 1933), by Chapter 5, Laws of Extraordinary Session, 1937, which provides, among other things, that Section 1791, Compiled Laws of Alaska, 1933, be amended to read as follows: "The Board of Public Welfare is vested with the entire and exclusive superintendence of the needy, with authority to delegate its powers and duties provided for in this Act to the Director of Public Welfare."

Therefore, without continuing our views on the subject under consideration to any greater length, suffice it to say, that it is the opinion of this office that the administration and payment of Mothers' Allowances, under our present laws, properly and legally belongs in, to and under the provisions of the Department of Public Welfare. Chapter 3 of our 1937 Extraordinary Session and Chapter 5 of said Extra Session, above referred to and quoted in part, must be construed together according to their intent and purposes, and, therefore, it was the duty of the Governor of Alaska to assign the payment of such allowances to mothers, to the said Department of Public Welfare immediately on the 2nd day of July, 1937, the effective date of said Chapter 5.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Territorial Constructed Aviation Fields May Be Used Under Proper Regulations by Private as Well as Government Planes.

August 7, 1940

Hon. Wm. A. Hesse
Highway Engineer
Juneau, Alaska

Dear Mr. Hesse:

Thanks for copy of your letter of August 3 addressed to His Excellency, Governor Gruening, relative to aviation fields in Alaska, and more especially to existing conditions involving the private and public use of the Territorial constructed field at Nenana. You say: "The existing Territorial field which the Aeronautics Board would improve is desired because the construction of a beam station at that place is contemplated, but it seems that the Federal law does not permit the commercial use of fields constructed by the Department of Commerce."

You further say that you have advised Mr. Marshall C. Hoppin, Alaska Superintendent of Airways, that there was no objection to the use of the Nenana field by the Federal Government providing the field was open for public general use, but it appears that he cannot make any such concession in the face of existing law.

We have no wish or desire to enter into a discussion with Mr. Hoppin, or to question his authority, but we would like very much to have his construction on Subsection (c), Section 175, Title 49, U.S.C.A., which reads as follows:

> "AVAILABILITY OF GOVERNMENT FACILITIES FOR PUBLIC USE. Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department, or other independent establishment having jurisdiction thereof, deems advisable and may by regulation prescribe. (Act

of Congress approved June 23, 1938—Chapter 601, Sec. 107 (i) (1, 2)."

And, his further construction of Section 453, Title 49, U.S.C.A., (Act of Congress approved June 23, 1938, Chap. 601, Sec. 303, 52 Stat. 986) which provides as follows:

> "No Federal funds, other than those expended under this chapter, shall be expended other than for military purposes (whether or not in cooperation with state or other local governmental agencies) for the acquisition, establishment, contruction, alteration, repair, maintenance, or operation of any landing area, or for the acquisition, establishment, construction, maintenance or operation of air navigation facilities thereon, except upon the written recommendation and certification by the administrator, made after consultation with the authorities, that such landing area is reasonably necessary for use in air commerce or in the interests of National defense, and interested persons may apply to the administrator, under regulations prescribed by him, for such recommendation and certification with respect to any landing area or air navigation facility proposed to be established, constructed, altered, repaired, maintained or operated by, or in the interests of such person. There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Therefore, in view of the provisions of the above statutes it appears that the duly appointed, qualified and acting Superintendent of Alaska Airways, may, upon proper representation, grant to the public the use of said field, as well as all other fields in Alaska, that have been or may be subsequently constructed, and it is, therefore, the opinion of this office that on proper representation and presentation of the rights of the public to the necessary use of any landing field in Alaska, regardless of who, when, or by what means same was constructed, all necessary privileges would be granted, subject to proper regulations, and that

a cooperative agreement for the necessary use of landing fields in Alaska could be arranged.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Funds Collected from Estates of Deceased Territorial Beneficiaries Payable Directly Into Territorial Treasury.

October 7, 1939

Hon. Eiler Hansen
Superintendent, Pioneers' Home
Sitka, Alaska

Dear Mr. Hansen:

Your letter of September 20, 1939, addressed to Hon. Oscar G. Olson, Treasurer of Alaska, with reference to the collection of $1,519.00 from the estate of Asbjorn Hetland, Deceased, has been referred to this office under date of September 29, with a request we reply thereto.

We note that you are unable to concur with the Treasurer in the manner of handling the above designated claim of the Territory of Alaska against the estate of the said Asbjorn Hetland, Deceased, and, therefore, since this office has not heretofore been called upon to consider the question presented, or to express an opinion thereon, we are at somewhat of a loss or in the "dark" with reference thereto, for the reason that we are not advised as to the established methods by which such claims have been customarily adjusted by the Treasurer of the Territory, the Trustees, and the Superintendent of the Pioneers' Home. Our duties are, and have been, to prepare and present claims against

the estates of deceased persons dying in the Home, as well as against the estates of pensioners who were indebted to the Territory at the time of their death. From an examination of the required application to be made and filed with the Board of Trustees of said Home by all applicants entering said Home, it appears that such applicant, before being admitted to the Home, shall be required, among other things, to correctly list what property he has, or may have, and of what it consists, where the same is situated, and if such applicant has, by will or other conveyance, disposed of the same and, if he has, give the particulars how the same may or shall have been either encumbered, conveyed, or otherwise disposed of. Therefore, it would appear to us that the real purpose of the statute was to protect the Territory against the cost and expenses it may be required to incur for the care, keep, and shelter of said pioneer. Still and yet, it further appears by Section 1812, Compiled Laws of Alaska, 1933, that all moneys collected from the estate of any deceased pioneer shall be paid into the Treasury of the Territory of Alaska. Section 1811, Compiled Laws of Alaska, 1933, provides that any moneys left in charge of the Board of Trustees by any deceased inmate of the Pioneers' Home may be used for the burial and funeral expenses of such deceased inmate, and for the improvement of the burial plot of the Alaska Pioneers' Home, and any clothing or any other personal effects left by any deceased inmate of the Home may be used by the Board for the benefit of other inmates, or may be given to relatives, or sold, and the proceeds applied in the same manner as above provided for moneys left.

We find nothing which authorizes the Superintendent of the Pioneers' Home, or the Trustees thereof, authorizing them, or either of them, to apply any money collected from the estate of such deceased person, except as above stated, to be applied to any special fund for the maintenance of said Home. The last sentence of said Section 1812, Compiled Laws of Alaska, 1933, simply says, "All moneys so collected shall be paid into the Treasury of the Territory", and does

not make provisions, or any provision, for said money thus collected, to be paid into any special fund for the benefit of said Home, and, since it becomes the duty of the Territorial Legislature to biennially appropriate necessary funds for the upkeep and maintenance of said Home, we take it for granted that the purpose of the last sentence of said Section 1812 was that moneys collected from the estates of deceased persons, as well as from estates of pensioners in Alaska, should be paid into the Territorial Treasurer.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

No Member of Legislature Shall Hold or Be Appointed to Any Office Created During Term for Which He Was Elected.

April 19, 1939

Mr. F. F. Davis
C/o General Delivery
Juneau, Alaska

Dear Sir:

Your letter of April 8 received and considered, and your request for a ruling of this office relative to the matters and statements made therein, noted.

You say in your letter that Mr. Victor Rivers was a member of the 1937 and 1939 Sessions of the Territorial Legislature, and that during the 1939 Session he caused to be introduced a certain bill to set up a Board of Engineers. The bill was passed and the Governor appointed Mr. Rivers to the Board March 20, 1939. Then you proceed to quote Section 11 of our Organic Act and, further, say

that "because of the foregoing, advice is requested as to the legality of the appointment of Mr. Victor Rivers", and, further, "a ruling is requested on the status of Mr. Victor Rivers and action taken to have him disqualified from serving on the Board until the time as provided in Section 11 of the Organic Act has lapsed."

We presume that if Mr. Rivers was appointed on said Board, as stated in your letter, his appointment was made under and pursuant to Chapter 68, Session Laws of Alaska, 1939, which provides for the creation of such a Board. Therefore, the legality of the statute under which Mr. Rivers was appointed as a member of the Board of Engineers' and Architects' Examiners in the Territory not being attacked, we have before us your request for our interpretation of said Section 11 of the Organic Act, and the legality of his appointment pursuant thereto.

In order that there may be no misunderstanding relative to Section 11 of the Organic Act and our interpretation thereof, we here quote said Section, Act of Congress approved August 24, 1912, Section 11, Chapter 387, 37 Stat. 516, which provides: "No member of the legislature shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term. No person holding a commission or appointment under the United States shall be a member of the legislature or shall hold any office under the government of the Territory."

We must bear in mind that the infallible rule by which all courts, as well as capable lawyers are governed, that is to say, that unambiguous statutes require no technical construction, and especially where the language used to express the purpose of said statute and the object to be accomplished thereby and thereunder is set out in plain intelligible language. Section 11 of our Organic Act, above quoted, is just such a statute as above referred to. Its purpose is stated in plain English, and to attempt to

construe it otherwise, save and except as it reads, would be simply to misconstrue it.

The fact that Mr. Rivers was a member of the 1939 Session of the Territorial Legislature, at which said statute creating said Board of Engineers' and Architects' Examiners was enacted, and will remain a member of the Territorial Legislature until the expiration of his term, he is therefore ineligible to such an appointment as referred to in your letter for the period of one year thereafter, and any official act by such appointee would not be binding, or could such an action be legally enforced in the event such act or actions were contested. In the particular case under consideration, we think the statute could have been so worded as to have admitted of exceptions in like cases, but in as much as it makes no provisions or exceptions whatever, we must accept it as we find it.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

REPORT

OF THE

Attorney General

OF THE

Territory of Alaska

January 1, 1937-December 31, 1938

BY

JAMES S. TRUITT
ATTORNEY GENERAL

REPORT

OF THE

Attorney General

OF THE

Territory of Alaska

January 1, 1937-December 31, 1938

BY

JAMES S. TRUITT
ATTORNEY GENERAL

Juneau, Alaska
December 31, 1938

Honorable John W. Troy
Governor of Alaska

Juneau, Alaska

Sir:

I have the honor to submit to you, and through you to the Honorable Territorial Legislature, a report of the administration of this office for the period January 1, 1937 to December 31, 1938.

I take this occasion to express my appreciation for the good will and cooperation that has existed between the various offices. If mistakes have been made or misunderstandings have occurred, I am constrained to believe it was unintentional or due to lack of careful analysis. The work and associations have been of keen interest to me, and I desire to thank those who have worked in cooperation for their loyalty and support, and Your Excellency for the considerations you have extended this office and the cordial relations that have prevailed.

Respectfully,

JAMES S. TRUITT,

Attorney General of Alaska.

REPORT

of the

ATTORNEY GENERAL OF ALASKA

JANUARY 1, 1937-DECEMBER 31, 1938

GENERAL SCOPE OF DUTIES

The functions and duties of the Attorney General are set forth generally in Chapter V, Compiled Laws of Alaska, 1933, and in various other acts of our Legislature. We believe it unnecessary to go into detail and recite the many official acts and duties required and performed pursuant thereto, except to say that the work has increased to a maximum peak in the past two years.

We have tried to make known and to discover which laws on our statute books are not working well, and to learn where they should be amended, so that the result intended by our Legislature might be attained. Therefore, in this report there is given to you suggestions for amendments and changes in existing laws which through experience are shown to be advisable.

Also, we have corresponded with the District Judges, U. S. District Attorneys, Probate Judges and others, including civic bodies throughout the Territory, in an effort to obtain first-hand information, suggestions and recommendations, on needed legislation in the different and remote parts of the Territory. These communications are on file in this office for the information of any of the legislators. We should like to print some of them in their entirety, but funds will not permit. However, a brief resume will be given elsewhere herein.

Copies were made of all Memorials passed at the last session of our Legislature and addressed to the persons and bodies designated, and a report will herein be given as required by Section 653, Compiled Laws of Alaska, 1933.

Only very few opinions will be included in this report; the number printed being limited because of our inadequate appropriations. The many new and different problems with which the last Legislature had to deal and cope with have been the subject of many opinions, both written and oral.

Most of the litigation in which the Territory is involved is being completed with satisfactory results, and a more detailed account will be found elsewhere in this report.

REPORT ON MEMORIALS

Secretary Roper advised that all Memorials addressed to the Department of Commerce would receive careful consideration in connection with the subjects to which they referred. The office of the Secretary of the Interior also gave the same assurance with respect to the Memorials addressed to that office.

W. C. Dibrill, Superintendent of Lighthouses, Ketchikan, Alaska, advised that certain aids to navigation in the Kotzebue Sound area would receive careful consideration, but at the present time no funds were available for allotment for new aids in the area referred to, but it was anticipated that it would be practicable to afford some relief to navigation at a future time when funds from further appropriations by Congress became available.

J. M. Johnson, Assistant Secretary of Commerce, assured that the Department of Commerce in its administration of air commerce would give careful consideration to the development program involving the selection and improvement of airports in the Territory as outlined in House Joint Memorial No. 15.

The Secretary of State advised that conferences were being held in regard to the protection of the Alaska salmon fisheries.

R. R. Waesche, Commandant, U. S. Coast Guard, advised that the Coast Guard recognized the importance of rebuilding the Nome Coast Guard Station and was endeavoring to obtain an appropriation for that purpose, and that the desirability of having a large, fully equipped Coast Guard vessel at Kodiak was also recognized, but owing to the additions in recent years to the Coast Guard vessels in Alaska and to the restrictions imposed by limited appropriations, the prospect of a further addition at Kodiak was not favorable.

Karl A. Crowley, Solicitor, Post Office Department, advised that consideration would be given to House Joint Memorial No. 46, relative to the need for an increase in compensation of employees of the Custodial Service employed in Federal buildings in Alaska.

J. L. Schley, Major General, Chief of Engineers, War Department, advised that the project for the dredging of Dry Pass, described in Memorial No. 44, was completed by the Department in October, 1937.

With reference to the needed improvement of Metlakatla Harbor, described in House Joint Memorial No. 68, Major General Schley advised that in a report of the Chief of Engineers on the preliminary examination and survey of Metlakatla Harbor, Alaska, authorized by the River and Harbor Act of August 30, 1935, and transmitted to Congress by the Secretary of War on December 11, 1936, it was stated that because of the steep slope of the sea bottom the construction of breakwaters to inclose a basin of medium size on the harbor frontage would be unduly expensive and therefore not advisable at that time. It was suggested that a review of this report might be inaugurated by securing the passage of a resolution by the Committee on Rivers and Harbors, House of Representatives, through our Delegate to Congress from Alaska, and that upon adoption of the resolu-

tion, the Department would then proceed with the necessary investigation with a view to preparation of a report for submission to the Committee with the recommendations of the Chief of Engineers.

Receipt of other Memorials was acknowledged by the various persons and bodies to whom they were addressed with the assurance that they would be referred to the proper sources for consideration and action.

RECOMMENDATIONS

Following is a brief resume of some of the suggestions and recommendations sent us for needed legislation in response to inquiries made under and pursuant to the provisions of Section 664, Compiled Laws of Alaska, 1933:

That a law be enacted providing for the inspection of weights and measures.

That the administration of the Bureau of Fisheries in the Territory be investigated.

That Section 3162, Compiled Laws of Alaska, 1933, be amended to require a larger license fee for non-resident fishermen.

That only bona fide residents of the Territory be employed in the fishing industry, on a graduated scale, allowing employers 10% of the total number employed to be non-residents, such as foremen, superintendents and technical help.

That a new law be enacted prescribing a legal definition of a "resident of Alaska" with respect to fishing, in order to prevent fishermen coming in the Territory early in the spring and leaving when the cannery crews go out in the fall.

That a law be enacted prohibiting non-residents fishing in Alaska waters; said law to take effect two years after approval by Congress, as two years would give everyone who wants to fish in Alaska waters ample time to become residents, and give the canneries ample time to make arrangements in the selection of their fishermen.

That a law be enacted to loosen the strangling hold of non-resident unions continually threatening

the Alaska labor situation and dictating the terms of employment and conditions under which labor may be employed in Alaska.

That an Alaska Game Commission be created with roots of authority in the Territory and not in appointees from Washington, and that the constitutionality of the Alaska Game Law be tested.

That Chapter 67, Session Laws of Alaska, 1923, as amended by Chapter 113, Session Laws of Alaska, 1929, be either amended so as to make the law enforceable, or be stricken from our statutes; that the type of branding instrument for the identification of blue foxes in use by Territory at present time be condemned.

That Territorial bounty on wolf and coyote pups taken in dens be reduced to one-third or one-fourth the amount paid on mature animals. It is claimed that trappers find a den, take the pups, and allow the mother to live in order that bounty may be claimed on another litter the next year.

That the present law be repealed, or else made to require the recording of assessment work on mining claims held by companies or individuals on public domain.

Many recommendations have been received with reference to our liquor law as it now stands. Among them is found those favoring the re-establishment of a Territorial Board of Liquor Control; Territorial Liquor Stores and a Permit System; prohibiting the sale of intoxicating liquor to Natives and habitual drunkards; that Subsection (A) of Section 9, Chapter 78, Session Laws of Alaska, 1937, be amended to include voters in voting precincts outside of incorporated cities or towns; changes in method of attaching revenue stamps, and various other suggestions.

That a law be enacted providing for the inspection of all seeds and bulbs imported into the Territory.

That agents of the Department of Public Welfare be allowed compensation for the work attached to completing applications for old age pensions.

That Section 4612, Compiled Laws of Alaska, 1933, be amended to require that witnesses in the execution of wills sign in the presence of each other.

That a competent probate auditor check over probate records and counsel with probate judges in the Territory.

That Chapter 3, Laws of Extraordinary Session, 1937, be amended by making provision for the acceptance of the benefits of the Federal Social Security Act by the Territory for the care and relief of dependent or indigent widows and children.

That the constant conflict between relief or assistance for White as contradistinguished from Native widows and children, be ironed out, as it is claimed the assistance given by the Bureau of Indian Affairs is inadequate, and more theoretical than actual.

That the school laws be revised. Much dissatisfaction has been expressed because Territorial schools have been closed in some communities and White children have been forced to attend Indian schools or stay home.

That a method of taxation be employed to pay for and secure fireproof safes for recorders.

That rules of Civil procedure prepared by the Committee appointed by the Supreme Court of the United States be adopted.

That a law be enacted to authorize District Judges to appoint a foreman of the Grand Jury, to serve for a longer or shorter time independent of and outside the regular venire.

That Section 5642, Compiled Laws of Alaska, 1933, be amended by striking out the words "or has committed suicide."

That a law be enacted to protect the property of those engaged in the logging business.

In addition thereto, we herewith make the following recommendations:

That Section 2161, Compiled Laws of Alaska, 1933, as amended by Chapter 84, Session Laws of Alaska, 1935, relating to compensation payable to the Territory of Alaska on account of the death of an employee, be rewritten with reference to Subsections 4, 5 and 8, by amending the title of such Act so that the same will include the Territory of Alaska as a beneficiary, and that other beneficiaries named

therein must be dependent upon the earnings of the deceased employee.

That Chapter 20, Session Laws of Alaska, 1937, relating to taxes on minerals be rewritten and so amended that the schedule of taxes payable be based on all minerals, including gold, platinum, palladium, osmium, irridium, and any other metal or mineral belonging to the platinum or palladium group produced in any mine or mines in the Territory. Exemptions should be raised to $15,000, and a bond required by all applicants for a license.

Section 1781, Compiled Laws of Alaska, 1933, as amended by Chapter 47, Session Laws of Alaska, 1935, should again be amended to require all applicants for pension allowances to schedule all property, real and personal, owned by such petitioner, before allowances are granted, and to further require the Board of Trustees of the Pioneers' Home, or other officials, to file for record in the Recording Precinct wherein such property is located such schedule of property. Such an amendment is vitally necessary to protect the Territory against frauds which are being committed, to wit, pensioners disposing of their property to some masquerading friend a few weeks or days before their demise. Such amendment should apply to any Territorial beneficiary.

Section 1502, Compiled Laws of Alaska, 1933, should be so amended as to require Independent Candidates for office in the Territory of Alaska to pay the same filing fees as those required by candidates representing a political party.

Subsection 1 (a) of Section 3138, Compiled Laws of Alaska, 1933, as amended by Chapter 14, Session Laws of Alaska, 1937, should be again amended to require licensees named therein to file copies of their Annual Territorial License with the Clerk of the District Court, and said licensees prohibited from practicing their said profession pending the filing of said copies.

Subsection 6 (c) of Section 3138, Compiled Laws of Alaska, 1933, should be corrected to read "on all cases in excess of twenty-five thousand **and not more than forty thousand,** ten cents per case" (See Sec. 1, Subsection 8 (c), Chapter 59, Session Laws of Alaska,

1927), instead of "on all cases in excess of twenty-five thousand, ten cents per case."

Paragraph 2 of Section 2054, Compiled Laws of Alaska, 1933, should be amended in such manner that the lien therein provided should be a preferred lien except to Territorial excise taxes.

That Section 579, Compiled Laws of Alaska, 1933, relative to the bounty on wolves and coyotes, be repealed. The Territory is paying too many bounties on predators taken in Canadian territory.

That Section 3161, Compiled Laws of Alaska, 1933, be so amended that all prosecutions thereunder shall be in the name of the Territory of Alaska, and all fines collected thereunder remitted to the Territorial Treasurer and covered into the General Fund of the Territory.

LITIGATION

Most of the litigation has been completed with satisfactory results. There is now pending in the Circuit Court of Appeals, San Francisco, two cases, namely, Melville St. Elmo Carscadden v. Territory of Alaska, and Territory of Alaska v. Alaska Juneau Gold Mining Company. As no case until finally decided can be conclusively analyzed and considered, we herein give but a brief resume.

The first case mentioned, Melville St. Elmo Carscadden v. Territory of Alaska, involves property which had been escheated to the Territory and which the plaintiff now seeks to recover. The vital question to be considered is that of the statute of limitations applicable to the case at bar, and the District Court for the First Division decided the case in favor of the Territory. However, the plaintiff has taken it to the Circuit Court of Appeals and what the decision of that Court will be is not at this time known.

In the case of the Territory of Alaska vs. Alaska Juneau Gold Mining Company, the Territory seeks to recover for the deaths of certain employees, as provided in Chapter 84, Session Laws of Alaska, 1935, and in this case the District Court for the First Judicial Division has held that the Territorial Legislature exceeded its authority

in enacting such a statute and decided in favor of the Alaska Juneau Gold Mining Company. The Territorial Board of Administration, by written order, directed the Attorney General to appeal the same to the Circuit Court of Appeals, that the question of the constitutionality of the Act may be decided once for all, and we must now await the decision of that Court. Many like cases are now hanging fire, pending the outcome of this case. Some of the mining companies have paid without question, but others refuse so to do.

Among the cases which will most vitally affect the entire Territory will be those for the collection of the gold tax, provided by Chapter 20, Session Laws of Alaska, 1937. Some of the mining concerns are paying this tax, but others contend that it is unconstitutional. By reason of the large amount of revenue involved, and the crying need for additional funds, it is imperative that the constitutionality of this Act be decided through the courts at as early a date as possible, and the future of a large portion of our Territory hinges upon the success or failure of these actions. Two cases are now pending in the Fourth Division, namely, Territory of Alaska vs. Alaska Gold Dredging Corporation and Territory of Alaska vs. Walker's Fork Gold Dredging Corporation. Many cases involving this same tax should be and will be filed as soon as the Territorial Treasurer reports such delinquencies as we know exist at the present time.

Also, many are fighting the taxes imposed under our Social Security statutes. Much of the new and experimental legislation passed by our last Legislature has been questioned and has brought to the fore many interesting problems. In the case of the Unemployment Compensation Commission of Alaska vs. Lindenberger Packing Company for percentage contributions due under the provisions of Chapter 4, Laws of Extraordinary Session, 1937, the District Court for the First Judicial Division decided in favor of the plaintiff. Two other cases of a like nature are now pending in the Fourth Division.

We joined with the United States Attorney for the Third Division in the prosecution of some 150 alien fishermen operating in the Bristol Bay District. Convictions were had in approximately 80 cases, and fines imposed and collected in the approximate sum of $16,000.00. These prosecutions were had under the provisions of Section 3161, Compiled Laws of Alaska, 1933, and we have recommended elsewhere in this report that this Section of our law be so amended that all fines collected in like cases be turned over to the Territorial Treasurer and covered into the General Fund of the Territory.

A suit was filed by the Territory against the Demmert Packing Company, a Corporation, et al, for pack taxes and license taxes on seines, and was decided in the District Court during the month of November, 1938, in favor of the Territory, whereby the Territory was awarded judgment against the defendant in the amount of $6,702.35, plus interest thereon at the rate of 12% per annum until paid.

In the case of the Territory of Alaska vs. Hydaburg Fisheries, Inc., a corporation, the Territory seeks to recover license taxes on packs of salmon for various years. The assets of this corporation are in the hands of the Seattle Association of Credit Men and settlement is now pending in the Superior Court of King County, Washington.

The case of the Territory of Alaska vs. Far West Fisheries, Inc. is similar to and in the same status as the case above referred to. We have found the assets of this Company to be of little consideration, encumbered by debts greatly in excess of the valuation of said assets. This case is also pending in the Superior Court of the State of Washington for final determination and settlement.

We have pending at the present time a number of estate cases, both within and without the Territory, in which the Territory has an interest. We believe that a majority of the Probate Judges are working in harmony and apparently with much more interest in matters of this

nature than they have previously worked. It is to be regretted that so many of our citizens have heretofore, and, in a large measure, continue to make Washington banks depositories of their savings, thereby giving to the State of Washington the advantage in the administration of estates of those dying either in Alaska or in the State of Washington, and too often such funds have escheated to the State of Washington when, in fact, such deposits, in the absence of heirs, properly belong to the Territory of Alaska. A number of cases have been brought to our attention where depositors, residents of Alaska, have their deposits in Washington banks and leave the Territory for medical attention, and in event of death, the State invariably lays claim to the administration of such estate and too often the same, in the absence of heirs, has escheated to the State of Washington. Notwithstanding the fact that we have a Supreme Court decision, namely, the Frank Lyons case, holding that such estates as those referred to should be administered in the Territory, the home of the decedent, there is always a fight or controversy with reference to same.

BOARD OF LAW EXAMINERS

The following members constitute the Board of Law Examiners:

James S. Truitt, Ex-Officio Chairman .....Juneau
R. E. Robertson, Member .....Juneau
Hugh O'Neill, Member .....Nome
L. V. Ray, Member .....Seward
Charles E. Taylor, Member .....Fairbanks

Examinations for admission to the bar were held at Juneau, August 23, 1938 to August 27, 1938. Three applicants, namely, Paul Danzig, Carl D. Hupp and Edwin Mosier, took examinations and passed both oral and written examinations with creditable ratings. Oral examinations were given before Honorable George F. Alexander, District Judge, First Division, Juneau, and covered all subjects outlined by Territorial statute.

Examinations were held in Fairbanks on the same dates as those given in Juneau, under the supervision of Charles E. Taylor, Member, Fourth Division. There was but one applicant for examination in the Fourth Division, namely, John A. Lathanan, Jr.

Following is a statement of the expenses incurred and paid by the Board of Law Examiners during the present biennium:

Amount appropriated by Legislature	$100.00
Expenditures for supplies, including stationery, postage, telegrams, clerical assistance, etc.	43.03
Unexpended balance to date	$ 56.97

Mr. Taylor has not yet submitted a statement of any expenses he may have incurred in the Fairbanks examinations, and for that reason the balance in this appropriation, above shown, is subject to change before the end of the biennium.

EXPENSES OF OFFICE

May I stress the point that for several years, so far as the Office of the Attorney General is concerned, appropriations have been so curtailed that no sufficient appropriation has been made for the proper conduct of this office. The acme of such curtailment in funds was reached, however, in our appropriations for the 1937-1938 biennium. And, in support of this statement I invite you to carefully analyze the appropriations made for the conduct of this office by our 1937 Legislature. I think it unnecessary to say more on this particular subject, except that I feel justified in asking for an increase in appropriations for the proper and efficient conduct of the duties of this office. Our work has increased, and is continuing to increase, and if the volume of work during the past two years is indicative of what the next two years will bring, it will be necessary to have an additional legal assistant, and we trust that the members of this Legislature will see the necessity

for making, not enormous, but proper appropriations, that we may conduct our duties with the efficiency and success we wish.

Following is an account of the finances of this office as of December 31, 1938:

	Biennial Appropriation	Amount Expended 12-31-38	Balance 12-31-38
Salary Attorney General	$10,000.00	$8,750.00	$1,250.00
Salary Clerk	4,200.00	3,675.00	525.00
Extra Clerical Assistance	400.00	229.98	170.02
Travel Expenses	1,000.00	719.40	280.60
Court Costs	750.00	573.96	176.04
Contingent Expenses	500.00	354.92	145.08
Law Books	400.00	280.30	119.70

In addition to the above amount appropriated for traveling expenses, $365.35 was allowed to be paid out of the Emergency Appropriation to help defray traveling expenses. A deficiency will of necessity exist in our contingent expense account before the end of the biennium, as out of the balance above shown at this date over $40.00 is already obligated for which statements have not yet been presented, and to this deficiency will have to be added the costs for printing this report.

OPINIONS

Chapter 20, Session Laws of Alaska, 1937, must be equitably construed.

June 25, 1937

Mr. Luther C. Hess, Esq.

Fairbanks, Alaska

Dear Mr. Hess:

Your letter of June 14, 1937, addressed to Mr. Oscar G. Olson, Territorial Treasurer, has been referred to this office for an opinion or an expression of our views in re a reasonable construction to be placed on, or an interpretation of, Chapter 20, Session Laws of Alaska, 1937, referred to in the last paragraph of your letter.

We have given the statute above noted considerable attention, and, we, perhaps, agree with the second sentence of the last paragraph of your letter, but as a lawyer we know something of your ability to construe a statute. However, we feel it not out of place to call your attention to one or more infallible rules in statutory construction which we must resort to in construing the one referred to in your letter.

The Legislature of any State or Territory, in the enactment of laws, is presumed to mean what it has plainly expressed, and when it has so expressed its meaning, construction is excluded. It is only when the meaning of the statute is obscure, or the words employed are of doubtful meaning, that, in order to give effect to the legislative intention, the duty of construction arises. Therefore, the apparent object of the Legislature is to be sought, as disclosed by the Act itself. In construing an instrument, whether a public law or a private contract, it is legitimate, if two constructions are fairly possible, to adopt that one which equity would favor. In the construction of a statute, a relative word, section or clause, has reference to its first antecedent only, unless so to restrict its application will manifestly do violence to the plain meaning of the language.

In order to interpret and construe Chapter 20, Session Laws of Alaska, 1937, it becomes necessary to divide the one, and only one, section of the Act, material to the question presented in your letter, into paragraphs:

Paragraph 1, of said Section 1, makes it obligatory on all miners, as defined in said Act, to pay a license to engage in the business of mining, and

Paragraph 2 thereof defines the word "mining" to include the extraction of all valuable metals, ores, minerals, asbestos, gypsum, coal, marketable earth or stone, or any of them, mined, as above referred to, except gold, platinum, palladium, osmium, irridium and any other metal or mineral belonging to the platinum or palladium group, and

Paragraph 4 relates to certain exemptions allowed the miner of other products than gold. Hence,

We must look to paragraph 5 for the answer to your question. It goes without saying that under the provisions of said paragraph 5, the lessor or grantor of a mine on a royalty basis, is as much of a miner as the man, men or corporation actually operating a mine. Hence,

It is the opinion of this office that the Chapter must be equitably construed, and that the lessee operator of a mine on a royalty basis, under the provisions of paragraph 6, of said Section 1, must first pay his lessor his contract royalties, and, second, deduct his exemptions not exceeding the sum of $10,000.00, and pay to the Territory the sum of 3% on all balances. His return must show total amount mined during the year, the name and address of his lessor, or conditional grantor, and the location of mine or mines operated during the year, and, further, the lessor or grantor must likewise make his return and pay his license taxes on the total sum received by him as such royalty on each mine leased by him without any exemptions whatsoever.

We trust that the above fully covers the question presented.

Respectfully yours,
JAMES S. TRUITT,
Attorney General.

Domicile of owner determines the situs of vessel to be taxed.

February 10, 1938

Hon. Elmer M. White, Clerk
Town of Valdez
Valdez, Alaska
Dear Sir:

Your letter of February 3 received, and your request considered.

There are a number of decisions by both the higher and lower courts of record, relative to the question submitted, to wit, taxation on vessels. The majority of said decisions deal with and are based on ownership, domicile of owner, situs of vessel, registration and/or enrollment of vessel at time the same was assessed for tax purposes, but so far we have been unable to find a decision exactly in point that will meet the peculiar situation we are confronted with in Alaska.

Section 9 of our Organic Act, Act of Congress approved August 24, 1912, recognizes the right of the Territorial Legislature to authorize incorporated towns or municipalities to levy taxes not to exceed 2 per centum of the assessed valuation of property within a town in any one year, and

Subsection 9, of Section 2383, Compiled Laws of Alaska, 1933, provides inter alia, that municipalities may assess, levy and collect, a general tax for school and municipal purposes not to exceed two per centum of the assessed valuation upon all real and personal property, and to enforce the collection of liens created thereby by foreclosure, levy, distress and sale.

Section 2426, Compiled Laws of Alaska, 1933, provides that the power granted to the council to assess, levy and collect a general tax for school and municipal purposes, shall be exercised by means of general ordinances duly passed by the council of such corporation, and

Section 2447, Compiled Laws of Alaska, 1933, provides, in part, that the council is empowered by ordinance to provide for the annual assessment and levy of taxes upon all real and personal property within the limits of the corporation, and by such ordinance to fix the dates when such assessment shall be annually made; said Section, also, further provides, that the council by its general ordinance may classify the different kinds of property for tax purposes.

From the above statutes we must conclude that any property, either real, personal or mixed, in order to be

taxable, must properly belong within the corporate limits of such municipality. Hence, domicile of the owner of such property, situs of such property, and registration of the property, appear to be the real questions to be answered.

Subject to the rule that ordinarily the Legislature (City Council) has power to fix the situs of personal property to be assessed the owner at the place of his domicile, in general, for the purpose of taxation, a person must have a domicile or residence somewhere,

> 61 C.J. 511, Sec. 622; McCutcheon vs. Rice County, 7 Fed. 558.

In maritime lien laws, the home port is the place of the owner's residence, because the place of enrollment is only prima facie evidence and may be always contradicted. Ordinarily, as between different taxing districts in the same state, the particular place where the vessel may be registered or enrolled is not necessarily the place of taxation, the situs of the vessel being at the domicile or residence of the owner although registered elsewhere,

> 61 C.J. 529, Sec. 641; Taxation at domicile of owner upheld in State vs. Higgins, 116 S.W., 617; People vs. Niles, 35 Cal. 282.

A vessel, like other personal property, is subject to taxation at the place where the owner resides, even though it is constantly being taken on voyages outside the limits of the state,

> St. Louis vs. Wiggins Ferry Co., 11 Wall. 423, 20 L. Ed. 192; Ayer, etc. Tie Co. vs. Kentucky, 202 U. S. 409, 50 L. Ed. 1082.

The principle is the same in the case of vessels which have been in the state in which the owner lives, and even when it is physically impossible for them to come there. Under the earlier statutes, when the port of registry was required to be the port nearest to which the owner resided, it was considered that the statute created what might be called the "home port" of the vessel which con-

stituted the place of taxation in the absence of an actual situs elsewhere. Under more recent statutes the choice of port of registry is practically optional with the owner, and has little or no bearing on the place of taxation and, in fact, it has always been the law that when the port of registry was not the domicile of the owner the vessel was taxable at the latter place,

> St. Louis vs. Wiggins Ferry Co., 11 Wall. 423, 20 L. Ed. 192; Ayer, etc. Tie Co. vs. Kentucky, above cited.

A vessel is not taxable in a port of a state other than that in which her owner resides, to which she plies, and at which she is temporarily staying while loading or unloading her cargo, or even when she is laid up for the winter when through the rigor of the climate navigation is closed,

> 26 R.C.L. 281, Sec. 247.

We believe from the above you will be able to note our opinion on the subject of taxation as applied to vessels, that is to say, the domicile of the owner determines the situs of the vessel to be taxed.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Duty of Alaska Aeronautics and Communications Commission to make best arrangement possible in the appointment of a Supervisor.

August 10, 1937

Hon. John W. Troy
Governor of Alaska
Juneau Alaska

Dear Governor Troy:

This is to acknowledge receipt of your letter of August 7, in which you submitted the following question

for our consideration and reply: "Would it be lawful and proper to appoint a man from the Department of Commerce, employed and paid by the Department of Commerce, for the supervising position of the Alaska Aeronautics and Communications Commission?"

By reference to Chapter 75, Session Laws of Alaska, 1937, you will note that Section 2 of said Act creates an Aeronautics and Communications Commission, and provides, in part, that the Governor of the Territory of Alaska and four (4) other persons, to be appointed by him, shall constitute the personnel of such Commission, and that the Governor shall serve as Chairman of the Commission.

Section 3 of said Act provides that the Commission shall have supervision over aeronautics and communications within the Territory, and shall from time to time make recommendations for:

(a) The establishment, location, maintenance, operation and use, of airports, landing fields, airmarkings, air beacons, and other navigation facilities.

(b) Gives such Commission complete authority to enforce all rules and regulations promulgated by it for the promotion of aeronautics and communications in the Territory, provided that such rules, regulations and orders shall not duplicate or conflict with the aeronautical and communications regulations in force by the Department of commerce of the United States, and/or the Federal Communications Commission, and/or the provisions of the Federal Air Commerce Act of 1926 (Act of Congress approved May 20, 1926, Chap. 344, Sec. 1, 44 Stat. 568, 49 U.S.C.A. Sec. 171).

Section 8 of said Act provides that the Commission shall appoint and at pleasure remove, a supervisor of aeronautics and communications, who shall have such powers and duties, and perform such functions consistent with the provisions of this Act, as may be delegated to him by the Commission. Said supervisor shall receive as compensation an amount not to exceed Three Thousand Six Hundred Dollars ($3,600.00) per annum.

Section 21 of said Act appropriates the sum of $40,000.00 for carrying out the provisions of the Act.

Therefore, after a fair consideration of Chapter 75, Session Laws of Alaska, 1937, including its various provisions relating to the subject of aeronautics and communications in Alaska, we do not hesitate to say that the whole and entire question of aeronautics and commnications in Alaska was, by said Act, entrusted to the Commission created by Section 1 of said Act, above referred to, and

Section 8 of said Act makes it the duty of said Commission to select and appoint a supervisor of aeronautics and communications, with the powers and duties required of him under said Act and the directions of said Commission. Hence, need we question the authority and the jurisdiction of the Commission in appointing such supervisor, or have we reason to believe that such Commission will not act for the best interests of Alaska?

You know that the amount of money appropriated by our Territorial Act to carry out the provisions of said Act for the biennium ending March 31, 1939, is wholly inadequate, and, further, we will say that, in our opinion, it is the duty of the Commission to make the best arrangement possible in the appointment of such supervisor, one that will be to the best interests of Alaska. Our statute does not direct, or even suggest, whom such Commission shall appoint as a supervisor; only provides that it, the Commission, **shall** appoint such a person, and there are no provisions, or even a suggestion in said statute, that will prohibit such Commission from cooperating with the Federal Government in making such an appointment, or in making an attempt to coordinate and cooperate with the Federal Government in establishing aeronautics and communications regulations in Alaska, and, further, there can not be any legal objections to making such an appointment as suggested in your letter.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Lloyd's of London can not legally transact insurance business in Territory prior to compliance with Territorial statutes.

August 5, 1937

Hon. Frank A. Boyle

Auditor of Alaska, and
Insurance Commissioner for Alaska

Juneau, Alaska

Dear Mr. Boyle:

Your letter of August 4 received, and your request for an opinion of this office relative to the permission of Lloyd's of London to qualify as an insurance company in the Territory of Alaska, noted.

By reference to Section 1, Chapter 22, Session Laws of Alaska, 1937, you may note the following: "A company engaged in the business of insurance, of a suretyship, or of guaranteeing against liability, loss or damage, or of entering into contracts substantially amounting to insurance, shall be deemed an Insurance Company and shall not transact such busines unless the business is authorized or permitted by the laws of the Territory, and all laws regulating the same and applicable thereto have been complied with."

Section 7 of said Act further provides, that "Before a certificate of authority to transact business in the Territory is issued to any domestic or foreign insurance company, it must file with the Commissioner a resolution adopted by its board of directors consenting that service of process upon the Commissioner in any action or proceeding against the company, brought or pending in the Territory upon any cause of action arising in or growing out of business transacted in the Territory, shall be valid service upon the company, and the consent shall be irrevocable, so long as a policy of insurance of such company shall remain in force in the Territory or any loss remains unpaid therein."

Section 8 of said Act further provides, in part, that, "No domestic or foreign company shall transact or attempt to transact any business of insurance upon risks in this Territory unless it shall first obtain from the Commissioner a certificate of authority to transact such business. Such certificate shall not be granted until the applicant conforms to the requirements of this chapter and the laws of this Territory prerequisite to its issuance."

Section 9 of said Act provides, in part, as follows, that "Any company, domestic or foreign, shall be entitled to a certificate of authority to transact insurance in the Territory whenever and during the time the company is solvent and can furnish to the people of the Territory safe and satisfactory insurance and shall fully comply with other provisions of law and with the following provisions so far as applicable to such company, namely:

1. A domestic and foreign stock or mutual insurance corporation shall:

(a) File with the Commissioner a copy of its charter or articles of incorporation and of its by-laws and of any amendments to either and all, certified to by its secretary or corresponding officers;

2. In addition, a foreign stock or mutual insurance corporation shall:

(a) File a certificate, satisfactory to the Commissioner, made by the insurance department of the state, district or territory where it is organized, that it is there organized and authorized to transact the kind of insurance that it seeks to transact in the Territory, which certificate shall also state the date on which the company was last examined and by whom it was examined;

(b) If organized outside of the United States, file a certificate, satisfactory to the Commissioner, made by the proper officer of some insurance department in the United States, that the corporation has deposited with the department in trust for the benefit of all policy holders in the United States securities having the market value of at least $100,000.00.

Section 13 of said Act, provides, in part, as follows: "No person, firm or corporation, shall act as agent for any insurance company, corporation, association, firm or individual in the transaction of any insurance business within this Territory or negotiate for or place any risks or in any way or manner aid such corporation, association, firm or individual in effecting insurance or otherwise in this Territory, unless such corporation, association, firm or individual shall have fully complied with the provisions of this Act. Any person, firm or corporation violating the provisions of this Section shall be liable to a fine of not less than $50.00 nor more than $500.00."

Therefore, without quoting further provisions of our law relative to the insurance business in this Territory, we conclude that unless and until Lloyd's of London shall have fully complied with the provisions of our statute, it, as a company, copartnership, association, or as an individual, can not legally transact an insurance business in the Territory of Alaska, and that you can not under our statute issue to said Lloyd's, or any agent representing such company or concern, a certificate authorizing such agent to transact such insurance business.

We agree with you that it is unfortunate that our law makes no provision for such a company or organization as Lloyd's of London to transact business in the Territory.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

A foreign insurance company, not authorized to do business in Alaska, can not make a valid contract enforceable under provisions of Chapter 22, Session Laws of Alaska, 1937.

December 3, 1937

Hon. Frank A. Boyle
Insurance Commissioner
Juneau, Alaska

Dear Mr. Boyle:

Your letter of November 1 was received in this office during my absence, hence the delay in replying thereto.

In your letter you refer to our former opinion on the subject of insurance companies doing business in the Territory under the provisions of Chapter 22, Session Laws of Alaska, 1937, and say, in part, that: "One further question presents itself and I believe is not clearly answered in the opinion, that is, can a State forbid a citizen of that State from contracting in another State for insurance? a concrete example being: If A wrote to an insurance company in Massachusetts and asked for rates on insurance, which that company immediately gave, and then A sent a formal application to the company together with the fee covering the same and the company issued a policy of insurance based upon the facts and the fee, would A be then within his rights and could the State forbid A from securing a policy of such insurance? It shall be understood in this connection that the insurance company is not qualified in any manner to do business in the Territory."

We fully realize the importance of the question submitted, and the same is pertinent. Consequently, we have re-examined our former opinion, and, likewise, the case of Hooper vs. State of California, 155 U.S. 652, 39 L. Ed. 299, upon which our former opinion was largely based, prior to this writing, and we find no occasion to change our said opinion. However, the question submitted by you, fully set out above, presents certain features not clearly covered by our former opinion relative to the rights of

the Territory to enact laws governing every phase of insurance contracts entered into within the Territory of Alaska.

Under the authority cited above (Hooper vs. State of California), the Territory of Alaska has the right to prohibit her citizens from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent employed to that end. You will note that the language used in said case, that is to say, "to prohibit her citizens from contracting **within** her jurisdiction, etc." certainly will not prohibit "A" from entering into a contract of insurance with some company in Massachusetts, though not authorized to do business in the Territory. The contract in that event would be a Massachusetts contract and enforceable there, and not elsewhere.

"Parties may adopt laws of another State than their own a part of their contract, if not contrary to law or public policy of the State wherein the contract is made and is to be performed," and, again, "An insurance contract is ordinarily considered to have been made in the state wherein policy was applied for and delivered, and first premium paid,"

> Conn. Life Ins. Co. vs. Boseman, 84 Fed. (2d) 701; Mutual Life Ins. Co. vs. Hill, 193 U.S. 551, 48 L. Ed. 788.

The law of the place (lex loci contractus) where the contract was entered into will govern. A foreign insurance company not authorized to do business in Alaska can not make a valid contract enforceable therein under our present law, Chapter 22, Session Laws of Alaska, 1937, and the decisions above referred to, but the right of the citizen to make legal contracts can not be denied.

Section 10, Article 1, U. S. Constitution, provides, in part, that: "No state shall pass any law impairing the obligation of contracts * * * ." The right of the citizen to make contracts in all matters legal under the law of

the State wherein the same is made is an inherent right in such citizen and enforceable where made, if not otherwise provided for by the contract itself. The right of petition, the right to keep and bear arms, rights in the Constitution, shall not be construed to deny or disparage others retained by the people, and all rights not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people.

We believe that the above, as a supplement to our former letter, will answer the question submitted by you.

Respectfully yours,
JAMES S. TRUITT,
Attorney General.

Employees of Territory in attachment cases may be legally garnisheed.

October 28, 1937

Hon. Oscar G. Olson
Territorial Treasurer
Juneau, Alaska

Dear Mr. Olson:

Your letter of October 27, requesting an opinion of this office relative to your liability as Treasurer of Alaska in garnishment proceedings in aid of an execution, and if you can be held liable for the wages that are due to any employee under your supervision, received and considered.

On an execution properly issuing out of a Court of unquestioned jurisdiction, as the execution and notice of garnishment above referred to appears to be, the judgment creditor is entitled to take on such an execution only what belongs to his debtor, and only the actual interest of the debtor therein,

> 23 C.J. Sec. 97, p. 351; Hatch vs. Standard Oil Co. 100 U.S. 124; Dimmick vs. Rosenfeld, 34 Ore. 101, 55 Pac. 100.

Upon the grounds of public policy it is generally held that the salary or compensation of public officers and employees is not subject to execution, judgment, or garnishment, except under the authority of a statute broad enough to include them,

23 C.J. Sec. 62, p. 334.

In many jurisdictions statutes exist providing a mode by which a judgment may be collected out of wages or other credits of the judgment debtor by special form of execution, and limiting the scope of the remedy of the judgment creditor through that process. Such a statute, however, is in derogation of the procedure at common law, and takes from the debtor without notice and without a hearing, property, which, except for the statute, is exempt from execution.

The writ of execution and garnishment served upon you in the above designated cause of action, comes directly under the provisions of Section 3753, Compiled Laws of Alaska, 1933, which provides, as follows:

> "PUBLIC OFFICER LIABLE TO ANSWER AS GARNISHEE. Any salary, wages, credits, or other personal property in the possession or under the control of the Territory, or any division, city, incorporated town, school district or other political subdivision therein or thereof or any board, institution, commission or officer of the same, belonging or owed to any person, firm or corporation whatsoever shall be subject to attachment, garnishment and execution in the same manner and with the same effect as property in the possession of individuals is now subject to attachment, garnishment and execution; provided, however, that process in such proceedings may be served on the officer by or through whom such salary, wages, credits or other property is paid or delivered in the ordinary course of business or on the officer whose duty it is to audit or to issue a warrant for such salary, wages, money or other personal property; and provided further, that no clerk or officer of any court shall be required to answer as garnishee as to any moneys or property in his possession in the custody of the law."

Therefore, since the wages or salary payable to the judgment debtor by the Territory of Alaska, through your office, as such Treasurer, are not in the custody of the law, we must conclude that the above quoted section of our statute will govern your actions in said matter.

As to any exemptions to which the judgment debtor may be entitled, we refer you to Section 3724, Compiled Laws of Alaska, 1933, the first subdivision of which said Section provides, as follows:

> "The earnings of the judgment debtor, for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, to the amount of One Hundred Dollars when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, supported in whole or in part by his labor."

The above, we believe, fully answers your questions.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

University of Alaska, when employing labor, is subject to provisions of Workmen's Compensation Act.

July 10, 1937

University of Alaska

College, Alaska

Attention: John H. Kelly, Secretary of Executive Committee of Board of Regents of the University of Alaska

Dear Sir:

This is to acknowledge receipt of your very interesting, as well as important letter of July 3, 1937, in which you request an opinion of this office "as to whether instrumentalities of the Territory when employing labor are subject to the Workmen's Compensation Act."

You will note that all of the provisions material to this opinion are contained in Section 1, Chapter 62, Session Laws of Alaska, 1917 (Section 1391, Compiled Laws of Alaska, 1933), and the same were carried over in the change of name from "The Alaska Agricultural College and School of Mines" to the "University of Alaska," and re-enacted in Section 2, Chapter 49, Session Laws of Alaska, 1935, which is now the law on the subject and provides, as follows:

> "Section 2. There is hereby created and established a corporation under the name and style of 'University of Alaska' and by that name shall be capable in law of suing and being sued, taking and holding real and personal property, contracting and being contracted with, adopting and using a corporate seal, changing such seal at its pleasure, and doing and causing to be done all matters necessary for the purposes of any function as hereinafter set forth."

Therefore, we are forced to the conclusion that the University of Alaska is an Alaska institution, incorporated under said Act of the Territorial Legislature with all of the necessary official personnel for its operation as such a corporation. We are not unmindful of the fact that the said institution is largely supported from funds biennially appropriated by the Territorial Legislature, but we can not overlook the fact that the Act of the Legislature incorporating said institution, above quoted, provides that the University thus created and incorporated shall be capable in law of suing and being sued. States, as well as territories, are usually exempt from suits of the nature evidently anticipated in your letter, without their consent, and there is no doubt in my mind that the University of Alaska, as a Territorial institution, would be exempt from any such suit as contemplated if it were not for the provisions of the statute above quoted; by that statute the Territory has given its consent that the corporation thus created by it can be sued. Hence, you will find a correct answer to your inquiry in Section 2161, Compiled Laws of Alaska, 1933, as amended by Chapter 84, Session Laws

of Alaska, 1935, which provides, in part, that "any person or persons, partnership, joint stock company, association or corporation, employing five or more employees in connection with any business occupation, work, employment or industry carried on in this Territory, except domestic service, agriculture, dairying, or the operation of railroads as common carriers, etc." shall be liable to pay compensation as in said section provided for.

It is the opinion of this office that in the construction of the building mentioned in your letter under the plan known as "force account," the corporation comes fully under the provisions of the Alaska Workmen's Compensation Act, above referred to, to wit, Section 2161, Compiled Laws of Alaska, 1933.

Your protection as a corporation, as well as the protection of the Territory of Alaska, will be found in a surety bond.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Territorial Board of Education has authority to designate school attendance.

September 16, 1937

Mrs. Marie Drake

Deputy Commissioner of Education

Juneau, Alaska

Dear Madam:

Your letter of yesterday relating to Public School conditions at Palmer, Alaska, received and noted.

By reference to Section 1289, Compiled Laws of Alaska, 1933, you will note the authority given to the Territorial Board of Education and Commissioner of Education by the various Subsections contained therein, and more

especially do we call your attention to subsections "e," "h" and "m," of said Section 1289.

Subsection "e" provides that the Board of Education shall establish, increase, decrease, or abolish, school districts, and provide for the election or appointment of school boards and prescribe their powers and duties.

Subsection "h" provides for the transportation of pupils who reside a distance from public schools, and

Subsection "m" provides that said Board shall constitute the final court of appeals in all educational controversies, and shall delegate to the Commissioner of Education the execution of all policies decided upon.

Therefore, the question submitted to this office must be, in the final analysis, determined by the Territorial Board of Education and the Commissioner of Education. It goes without saying, if the Palmer school is full to over-flowing with pupils residing in the new Palmer School District, and the Wasilla school has ample room and capable of caring for such over-flow, the Board may, and, in fact, should, transport said over-flow to the Wasilla school.

Section 1351, Compiled Laws of Alaska, 1933, as amended by Chapter 18, Session Laws of Alaska, 1937, makes school attendance compulsory, and the parents or guardians of such pupils who refuse to attend the Wasilla school may be, under the provisions of Section 1352, Compiled Laws of Alaska, 1933, penalized for their failure or refusal to cause their children to attend such school, or schools, as may be indicated and authorized by such Territorial Board and Commissioner of Education, and

We may further say that if the school facilities, even in the newly created school district, are insufficient to accommodate all of the children residing therein and legally required to attend school, it is well within the power of the Board and Commissioner to select and cause certain of said pupils residing in said newly created district to attend the Wasilla school, provided transportation is furnished pursu-

ant to said Section 1351, to wit, all those children residing more than two miles from a public school.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Absentee voting at Primary Elections to be continued.

Clerks of Court not required to furnish Notaries Public with ballots.

October 25, 1937

Hon. Derick Lane

Clerk of the District Court
Third Judicial Division

Valdez, Alaska

Dear Sir:

Your letter of October 7, 1937, received, and the questions therein submitted, considered.

Sections 1531 to 1546, Compiled Laws of Alaska, 1933, relate wholly to absentee voting at General Territorial Elections. Section 1, Chapter 38, Session Laws of Alaska, 1935, amends only the first paragraph of Section 1539, Compiled Laws of Alaska, 1933, leaving the remaining Sections of said Compiled Statutes, to wit, 1531 to 1546, inclusive, intact. Section 2 of said Chapter 38, Session Laws of Alaska, 1935, extends all of the provisions of said Sections 1531 to 1546, inclusive, to Primary Elections, and, while said Section 2, above referred to, does not refer to the amendment of the first paragraph of Section 1539, we, therefore, must presume that it was the intent of the Legislature, in the enactment of said Section, to accept it, from the language used in declaring all of the provisions of the law contained in Sections 1531 to 1546 applicable to Primary Elections, as stated in said Section 2, which leaves for our consideration Chapter 73, Session Laws of Alaska,

1937, which attempts to amend Sections 1531, 1532 and 1533, Compiled Laws of Alaska, 1933, relating to absentee voting at General Elections, as above stated, but said Chapter does not, except by implication, repeal Section 2 of Chapter 38, Session Laws of Alaska, 1935.

You are well aware of the fact that repeals by implication are not favored in the law, yet if we accept the title of said Chapter 73, Session Laws of Alaska, 1937, as sufficient, and the subsequent procedure of the Legislature in amending said Sections, to wit, 1531, 1532 and 1533, Compiled Laws of Alaska, 1933, and accept the same and the whole thereof as the manifest intent of the Legislature in enacting said amendment, we can arrive at but one conclusion, to wit:

That inasmuch as said Chapter 73, Session Laws of Alaska, 1937, does not by implication or otherwise repeal said Section 2, Chapter 38, Session Laws of Alaska, 1935, absentee voting at Primary Elections will be continued under said Section 2 of Chapter 38, Session Laws of Alaska, 1935, for the reason that when two statutes deal with the same subject, both will be given effect if possible, but if they are repugnant in any provisions, later statute operates as repeal of first statute to extent of repugnancy, even in the absence of repealing clause,

In re Van Der Schuur, 20 Fed. Supp. 42,

and, inasmuch as we find, as above stated, that said Section 2 of Chapter 38, Session Laws of Alaska, 1935, has not been repealed, we must, therefore, conclude that said Section still remains the law, and that absentee voting at the Primary Elections will be continued under the provisions of said Section 2, Chapter 38, Session Laws of Alaska, 1935, as in former years.

As to your duties, you are required, under the provisions of Section 1536, Compiled Laws of Alaska, 1933, to supply United States Commissioners and Recorders with the necessary ballots and envelopes therein provided for, but I know of no statute requiring you to supply Notaries

Public in Alaska with such ballots. Section 1532, Compiled Laws of Alaska, 1933, as amended by (no section) Chapter 73, Session Laws of Alaska, 1937, provides that such absentee voter must apply to a Commissioner in the precinct of which he is a resident, or to a Notary Public for the Territory of Alaska, for an official ballot. Without defining the precinct or judicial division in which such Notary Public resides, relative to the precinct in which the absentee voter may be a qualified voter, and without any law directing you to provide and supply such Notary Public for Alaska with necessary ballots and envelopes, I feel it my duty to say, that if you do furnish and supply such Notaries, you will do so at your own discretion, since you have no legal authority to do so, except as may be inferred from said amended sections.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Native Indians may not hunt seal for bounty in the waters within the Glacier Bay National Monument.

April 2, 1937

Hon. Oscar G. Olson
Treasurer of Alaska
Juneau, Alaska

Dear Sir:

Replying to your request of this date relative to the right of native Indians to hunt seal for bounty in the waters within the Glacier Bay National Monument, you are advised that under a ruling of the Department of the Interior under date of January 6, 1937, it appears that the Glacier Bay National Monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time, of any wild bird or animal, except dangerous

animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited. Firearms, traps, seines and nets, are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative,

Federal Register, Vol. 2, Number 3.

Under the ruling above referred to this office very much doubts the right of the Native Indians, or any other person or persons, to take seal in the waters of said Bay, or the right of the Territorial Treasurer to pay a bounty on such seals killed in such waters.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Federal instrumentalities can not be taxed by the Territory of Alaska.

April 14, 1938

Mr. Patrick Fitzsimmons, Credit Agent
Indian Reorganization

Juneau, Alaska

Dear Mr. Fitzsimmons:

In your note of yesterday requesting an opinion of this office relative to the collection of Territorial taxes on certain industries in the Territory, to be organized and put in operation by the native Indians of Alaska, you request to be informed if such corporations such as you describe will be liable for "Territorial taxes on fish and other sea products caught and sold, or caught, processed and sold, by Indian corporations, operating under Federal charters, with funds loaned by the Government for operating their canneries, boats, seines, etc., and which equipment and buildings are mortgaged to the U. S. Government or bought in the name of the Government and remaining its property until the loan used for purchase has been repaid,"

from which we presume that such organizations will be, prior to engaging in business, incorporated under Federal charters, and the funds necessary in the conduct of the business undertaken will be furnished and supplied by the Federal Government under the provisions of Sections 469, 470, 471, 472 and 476, Title 25, U.S.C.A. Therefore,

If we are correct in our presumption, all business transacted by such incorporated organization will be under the direct supervision of the Secretary of the Interior, and that such organization must account to such Secretary for the funds supplied, and if such be the facts, then, and in that event, the business transacted can not be legally taxed by the Territory, especially since any tax levied by the Territory would be a license or privilege tax and can not be levied, assessed or collected, against the Federal Government or instrumentalities of the Government.

We do not feel it necessary to quote authorities in support of the above opinion. However, we respectfully call your attention to one Alaska case in point, to wit, Territory of Alaska vs. Annette Island Packing Company, 6 Alaska, 585, and the many decisions therein cited.

The questions presented in your note have come, both directly and indirectly, to this office on a number of occasions, and we have invariably held that Federal instrumentalities can not be taxed by the Territory of Alaska.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

"Bank Night" theatre drawings legal in Territory so long as purchase of a ticket to attend drawing is not required.

February 14, 1938

Cordova Central Labor Council
P. O. Box 197
Cordova, Alaska

Attention: Ina D. Davies, Secretary

Gentlemen:

In your letter of January 22, 1938, received in this office on the last mail, you say: "We understand Bank Night Theatre Drawings have been declared illegal in the States; will you please inform us if lottery drawings of that kind are illegal in Alaska—or if they are permitted in Alaska, to what extent are they regulated?"

In the first place, we will say that we are not advised as to the illegality of "Bank Night" theatre drawings in the various States of the Union. The question of their legality has been before the lower, as well as the higher courts of record in the States on three or more occasions, and indirectly before the Federal Courts on two or more occasions.

Our statute on the subject of lottery, that is to say, viz., Sections 4956 to 4959, inclusive, Compiled Laws of Alaska, 1933, makes lottery a crime and punishable (1) for the setting up or promoting lotteries; (2) selling lottery tickets; (3) advertising lottery tickets; and (4) selling tickets in fictitious lotteries, but our statute, like the great majority of state statutes, does not define or even attempt to define lotteries, or what constitutes "lottery." Such statutes, including our own, declares lottery to be a crime and provides a penalty, as well as punishment, for the violation of the statute. Therefore, we must look elsewhere for a correct definition of the term "lottery," and what are the elements necessary to constitute a lottery. To arrive at a proper definition, we must look to the generally accepted meaning of the term as defined by the authorities, and if there be conflict among the authorities as to the proper definition, we must adopt the definition

which includes as an element the evil which the statute was obviously intended to prevent.

The giving away of property or prizes is not unlawful, nor is the gift made unlawful by the fact that the recipient is determined by lot. Our statute provides that the recipient of a public office may be determined by lot in certain cases where there is a tie vote. To constitute a lottery there must be a further element, and that is the payment of a valuable consideration for the chance to receive the prize. Thus, it is quite generally recognized that there are three elements necessary to constitute a lottery: **First,** a prize to be given; **second,** upon a contingency to be determined by chance; and, **third,** to a person who has paid some valuable consideration or hazarded something of value for the chance.

Bishop, in his work on Statutory Crime, defines a "lottery" thus: "A lottery is any scheme where one, on paying money or other valuable thing to another, becomes entitled to receive from him such a return in value, or nothing, as some formula of chance may determine." And, we further note in 38 C.J. p. 286, "lottery" is defined as follows: "A species of gambling which may be defined as a scheme for the distribution of prizes or things of value by lot or chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize; or as a game of hazard in which small sums of money are ventured for the chance of obtaining a larger value, in money or other articles." This is the generally accepted meaning of the term, especially when used in criminal statutes. See

State vs. Hundling, 264 N.W. 603.

Also, in this same case, we note that the term "lottery," as popularly and generally used, refers to a gambling scheme in which chances are sold or disposed of for value and the sums thus paid are hazarded in the hope of winning a much larger sum. That is the predominant characteristic of lotteries which has become known to history

as the source of the evil which attends a lottery, in that it arouses the gambling spirit and leads people to hazard their substance on a mere chance. It is undoubtedly the evil against which our statute is directed. The provisions of the statute making it a crime to have possession of lottery tickets with intent to sell or dispose of them indicates the particular incident of a lottery which is regarded as an evil. To have a lottery, therefore, he who has the chance to win the prize must pay, or agree to pay, something of value for that chance. Many definitions have been given of the term "lottery." By the great weight of authority, in order that a transaction may be a lottery, three elements must be present: consideration, prize, and chance. See

R.C.L. 1222; 38 C.J. 286.

In the particular subject under consideration here, there is no question but what two elements of a lottery are present, **first,** a prize, and, **second,** a determination of the recipient by lot. Difficulty arises in the **third** element, namely, the payment of some valuable consideration for the chance by the holder thereof. A holder of the chance to win the prize in the matter under consideration, must be required to do two things in order to be eligible to receive the prize: **First,** to sign his name in the book, and, **second,** be in such proximity to the theatre as that he could claim the prize after his name was announced. If he is not required to purchase a ticket of admission to the theatre either as a condition to signing the registration book or claiming the prize when his name is drawn, the paying admission to the theatre added nothing to the chance.

We have reached the conclusion that we have no statute under which we can say that the scheme generally followed in the Territory by our theatres is either gaming or a lottery, and, this being so, there is nothing to bring the transaction under the terms of our Nuisance Act. We do not, by this action, express our approval of the very widespread custom of distributing money at moving pic-

ture theatres, on what is variously called "Bank Night," "Silver Night," etc. Such practice has been denounced in more than one theatrical magazine, and showmen have denounced the screen lottery. There is good reason to support the often-expressed view of our best informed citizens that the practice in question is detrimental to the show houses themselves, as well as hurtful to the public morals. No doubt many of the most faithful patrons of the pictures are anxious to see the fad pass, and the houses devoted to their proper function of wholesome entertainment. But, under our statutes, we are not authorized to declare the practice to be gaming or the operation of a lottery. See

> State vs. Crescent Amusement Co., 95 S.W. (2d) 311.

It might be contended that any consideration sufficient to support a contract at common law is sufficient to make illegal a scheme fulfilling the other requirements of a lottery. Support for this proposition is to be found in dicta contained in

> Brooklyn Daily Eagle vs. Voorhies (C.C.) 181 F. 579; Equitable Loan Co. vs. Waring, 117 Ga. 599, 44 S.E. 320, 62 L.R.A. 93, 97 Am. St. Rep. 177.

In our opinion detailed discussion of this argument is not required, because our statute definitely requires that, in order to constitute a lottery, payment must be given for the opportunity to participate. Although signing one's name in a book or appearing at the theatre at the time of the drawing might be regarded as consideration, it can not be called "pay" without warping that word out of all recognition. For the purpose of creating a lottery, consideration must be something of value.

The problem presented by "Bank Night," and similar schemes, is to determine whether it is an evasion of the statute or an avoidance of it, and this question is essentially one of fact. In answering this question, we do not propose to close our eyes to reality. The test by which to determine the answer to this question is not to inquire

into the theoretical possibilities of the scheme, but to examine it in actual practical operation. As we understand the actual situation under consideration, free participation is a reality. If this is so, then, regardless of the motive which induced the theatre to give such free participation, the scheme is not within the ban of our statute. Violation is shown only when, regardless of the subtlety of the device employed, the Government can prove that, as a matter of fact, the scheme in actual operation results in the payment of something of value for the opportunity to participate. See

State vs. Eames, 183 Atlantic, 590.

Inasmuch as the purchase of a ticket to attend the drawing not being required, the only and principal element necessary to constitute a lottery being lacking, it is our opinion that "Bank Night" theatre drawings in Alaska, as conducted at the present time, do not constitute a lottery.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Road house licensee can not sell beer and wine to persons not his guests.

December 9, 1937

Hon. W. J. Dowd
U. S. Commissioner
Kotzebue, Alaska

Dear Sir:

Your letter of November 17, 1937, received on yesterday's mail, and your request for an opinion of this office relative to the rights of a road house operator authorized under a Road House License to sell beer and wine, to sell the same to all patrons or customers for consumption elsewhere or in any other place other than in or on the premises where purchased, noted.

By reference to Section 13, Chapter 78, Session Laws of Alaska, 1937, you will note the classification of licenses that may be issued for the sale of intoxicating liquors in the Territory, and the fee to be paid by such licensee therefor.

Subsection (A) of said Section 13, provides for a Beverage Dispensary License to sell beer and wine for consumption on the premises, in quantities not to exceed five (5) wine gallons to any person in any one day, and fixes the fee to be paid for such license at $300.00.

Subsection (B) of said Section 13, provides for a Restaurant License to sell beer and wine in a restaurant with meals furnished in good faith to guests and patrons, and provides a fee for such license in the sum of $150.00.

Subsection (C) of said Section 13, (the subsection under consideration), provides for a Road House License, and reads as follows: "A Road House License shall give to the holder thereof the right to sell beer and wine in a road house situated not less than eighteen miles from any incorporated city and serving food to the traveling public," and fixes a fee to be paid for such license in the sum of $75.00.

From a careful consideration of said Section 13 and its subsections, we must conclude that a Road House License does not authorize the holder thereof to operate such road house as a beverage dispensary; neither does his license authorize him to operate as a restaurant licensee. His location with reference to any incorporated city, his serving food to the traveling public, and the fee fixed for issuing to him a license to sell beer and wine, in a measure, discloses the intent of the Territorial Legislature in the enactment of the statute under consideration. It is evident that if licenses to sell intoxicating liquor in the Territory were not classified, our opinion would be materially different from the one we shall hereinafter give.

It becomes our duty in construing a statute to construe it as a whole if possible, and, in order to do so, we

must ascertain if we can, the purpose and intent of the lawmaking body enacting the same, and since the classification of licenses to be issued provides for (1), a Beverage Dispensary License, (2), a Restaurant License, and (3), a Road House License, we do not believe that it was the intent of the Legislature to authorize a road house licensee to either operate a beverage dispensary or a restaurant, but to operate a road house and serve meals to the traveling public, and in so doing he may serve wine and beer to the traveling public while they are his guests, and it is the opinion of this office that such beer and wine must be consumed by such guests either with their meals or while in or on the premises where purchased. Otherwise, we would have to change the classification of licenses provided for and hold such Road House License a Dispensary.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

Druggists required to pay excise tax on liquors purchased and shipped into Territory for medicinal purposes.

January 28, 1938

Hon. Oscar G. Olson

Territorial Treasurer

Juneau, Alaska

Dear Mr. Olson:

Pursuant to your verbal request, this date, for an opinion of this office relative to the liability of druggists paying an excise tax on liquors for medicinal purposes, we would advise that:

The law does not treat distilled spirits as a drug or medicine, and neither physicians nor druggists can sell it even on prescription without payment of the special tax as liquor dealer,

See 33 C.J. Sec. 133, p. 323.

When it comes to the compounding of medicines requiring intoxicating liquors, and such compound when prepared will not be intoxicating, the disposition of liquor thus used would not subject the druggist to the payment of the license tax under our laws. However, it is the opinion of this office that such druggist should be required to pay the excise tax on all liquors purchased and shipped into the Territory under the provisions of Section 7, Chapter 78, Session Laws of Alaska, 1937. Subsection 7 of Section 5, Chapter 78, Session Laws of Alaska, 1933, provides as follows:

> "Any intoxicating liquors shipped into the Territory of Alaska other than to licensees hereunder shall be deemed contraband and subject to confiscation by the Territory and any intoxicating liquors so seized shall be sold under the orders of the District Court and Treasurer; provided, however, that the provisions of this Section shall not apply to sacramental wines, alcohol or liquors used for pharmaceutical or medicinal purposes or liquors used for filling the prescriptions of physicians,"

which will amply protect druggists using intoxicating liquors, for the purposes therein stated, against procuring the licenses provided for through other sections of said Chapter, but will not excuse him from paying the excise tax required under Section 7 of said Act, as above stated.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Regularly licensed importers and wholesalers in Territory may direct shipments of malt beverages under their licenses direct from outside breweries to bona fide dealers in Alaska.

June 19, 1937

Frank H. Foster, Esq.
Attorney at Law
Juneau, Alaska

Dear Sir:

Your letter of June 17, 1937, received, and your request noted.

You ask in your letter: "Can a regularly licensed wholesaler and importer under the laws of the Territory legally have shipments made upon its order to the outside distiller or wholesaler direct to the liquor store or holder of a beverage dispensary license in a town distant from the place of business of the wholesaler?"

You are advised that we have carefully considered Chapter 78, Session Laws of Alaska, 1937, and especially Section 13 (H) (1), (2), (3), and Section 13 (H), (J), which we believe contains the answer to your question. Therefore,

Inasmuch as any construction we may give on the statute as a whole must be based upon the intent and purpose of the statute as ascertained from the statute itself, and since said subsections (H) (1), (2) and (3), of said Section 13, of said Chapter 78, Session Laws of Alaska, 1937, are in nowise ambiguous, we are not at liberty to place any construction thereon; they speak for themselves, but

As to subsection (J) of said Section 13, entitled "Importers Licenses," we feel that in view of the numerous requests made to this office for our construction thereon that we should express our opinion with reference to said subsection and its purposes. Hence,

It is the opinion of this office that any one shipping or causing to be shipped into the Territory of Alaska any

malt beverage containing one per cent (1%) of alcohol by volume, or over, must first apply for and obtain an importer's license as provided for in said subsection; and

Further, said importer will be required to apply for and obtain from the Clerk of the District Court, on an order of the District Court, a wholesaler's license authorizing him to dispose of his imported merchandise to legally licensed retailers and/or beverage dispensaries in the Territory; and

Further, it is our opinion that any dealer in malt beverages in Alaska, as above stated, who obtains his importer's and wholesaler's license, and establishes his place of business in the Territory of Alaska as an importer and wholesaler of malt beverages, may sell to duly licensed dealers any such merchandise directly from his warehouse in Alaska or upon bona fide orders received from legally licensed retailers and beverage dispensaries, and have such orders filled and shipped direct from breweries or warehouses outside of Alaska to the consignee in Alaska in the name of such importer and wholesaler, regardless of where such retailer or beverage dispensary may be located and legally doing business in the Territory. The question of importation of intoxicating liquors in interstate commerce can no longer be considered as prohibitive under Section 2 of the Twenty-first Amendment to the Constitution of the United States, as determined and settled once for all in the case of the State Board of Equalization of California, et al, vs. Young's Market Company, et al, 299 U.S. p. 59.

With reference to one or more other sections than the one referred to herein contained in said statute, you are advised that any violation to acquire and properly attach the excise strip tax revenue stamps as required under the provisions of Section 7 of said Act and/or the rules and regulations made and published by the Territorial Treasurer pursuant thereto, will subject all such intoxicating liquors mentioned, described, or referred to

therein, to seizure and forfeiture of said liquors, and to the additional penalties prescribed in Section 12 of said Act.

We believe that the above fully meets your request.

Respectfully yours,

JAMES S. TRUITT,

Attorney General.

Territory has no jurisdiction over breweries, wineries, or the manufacturers of intoxicating liquor beyond the limits of the Territory.

February 25, 1938

Hon. Oscar G. Olson

Territorial Treasurer

Juneau, Alaska

Dear Mr. Olson:

Your letter of February 17, 1938, received and noted. You say in your letter that:

> "Complaints have been made to this office relative to the Jakeway Distributing Company, an Alaska Corporation, who now holds a wholesale distributing license at Juneau, Alaska.
>
> The complaints that have been filed in this office are that the Jakeway Distributing Company have a warehouse at Seattle and are distributing from that point to the various licensees in the Territory of Alaska and do not have a Territorial license for Seattle.
>
> I have personally taken the matter up with Mr. Jakeway and he informs me that all orders are received in their Juneau distributing point and then forwarded to Seattle from where the liquor is shipped.
>
> The question that arises under the circumstances, will it be necessary for the Jakeway Distributing Company to have a license for Seattle. My understanding of 1937 Session Laws of Alaska, Chapter 78, Section 6, Subsection C., that the wholesale distributing point of Juneau permits them only to reship from the Juneau plant instead of from Seattle.
>
> I will appreciate an opinion in this matter."

You are advised that under date of June 19, 1937, this office gave to Frank H. Foster, Esq., of Juneau, Alaska, its opinion on the subject of shipping into and the disposition of intoxicating liquors in Alaska, which opinion, we believe, fully answers your request as contained in your letter of February 17, 1938, and we herewith enclose a copy of that opinion, which we may supplement by saying that the brewer of malt liquors can not be so taxed; only the importer and wholesaler in Alaska can be reached,

> State Board vs. Young's Market Co. 299 U.S. 64; Pacific Fruit & Produce Co. vs. Martin, Governor of State of Wash. et al, 16 Fed. Supp. 34-40, inclusive.

If interstate commerce is to be taxed by license, or otherwise, in addition to that necessary to defray expense of inspection, the power to do so is that of the Federal Government and not of the State or Territory.

The orderly and secure regulation of the manufacture and sale of property in each of the States, by such States, and of the regulation and fostering of commerce between them require that neither trammel nor encroach upon that authority which belongs to the other. The authority of neither is to be extended by construction of constitution or statute beyond what is clearly implied from the recognized authority of each,

> Pacific Fruit & Produce Co. vs. Martin, cited above.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Excise tax on wine established by Section 7, Chap. 78, Session Laws of Alaska, 1937.

October 5, 1937

R. E. Robertson, Esq.
Attorney at Law

Juneau, Alaska

Dear Mr. Robertson:

This is to acknowledge receipt of your letter of September 21, 1937, relative to the excise taxes payable to the Territory of Alaska by brewers, distillers, bottlers or wholesalers, selling intoxicating liquors in the Territory.

A correct interpretation of Section 7, Chapter 78, Session Laws of Alaska, 1937, will answer your every request, and so much of said Section as is important here, reads as follows:

> "Section 7, EXCISE TAXES. Every brewer, distiller, bottler, or wholesaler selling intoxicating liquors in the Territory shall be required to pay on all malt beverages (alcoholic content of one per cent (1%) or more by volume), wines and hard or distilled liquors, the following prescribed taxes: malt beverages at the rate of five cents (5c) per gallon or fraction thereof; wine, or any other liquors of nineteen per cent (19%) of alcohol by volume or less, at the rate of fifteen cents (15c) per gallon or fraction thereof; any other liquors having a content of more than nineteen per cent (19%) of alcohol by volume shall pay at the rate of fifty cents (50c) per gallon."

It is evident that the Territorial Legislature, in the enactment of above statute, had in mind at least three classes or brands of intoxicating liquors containing one per cent (1%) or more of alcohol by volume, (1) malt liquors, (2) wines, and (3) hard or distilled liquors.

Malt beverages having one per cent (1%) or more alcoholic content by volume, being specifically provided for at the rate of five cents (5c) per gallon, there is no reason to pursue those provisions of the statute to any greater length. Therefore, we have only wine and hard or distilled liquors to consider.

The word "wine," followed by a comma, "or any other liquors of nineteen per cent (19%) of alcohol by volume or less," also followed by a comma, "at the rate of fifteen cents (15c) per gallon or fraction thereof" certainly establishes the excise taxes on wine. Hence, we have for consideration the words following the semicolon after the word "thereof," to wit, "any other liquors having a content of more than nineteen per cent (19%) of alcohol by volume shall pay at the rate of fifty cents (50c) per gallon," must refer to hard or distilled liquors having more than nineteen per cent (19%) of alcohol by volume.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Status of Natives, wards of Federal Government, under Department of Public Welfare.

March 21, 1938

Hon. J. G. Rivers, Acting Chairman
Board of Public Welfare
Juneau, Alaska

Dear Mr. Rivers:

Pursuant to your request of even date for an opinion of this office relative to a proper construction to be given to Section 1823, Article VII, Chapter XXX, Compiled Laws of Alaska, 1933, which provides as follows:

> "The provisions of this Chapter shall not inure to the benefit of any Indian or Eskimo resident of the Territory who is provided for by the Department of the Interior out of funds of the Treasury of the United States, or to any ward of the Government of the United States,"

we would state that,

In order that you may more fully understand our views with reference to the Section above referred to, as

well as to Section 1821 of said statute, we respectfully call your attention to the provisions of Title XI, Chapter 531, of the Act of Congress approved August 14, 1935, entitled "Social Security Act," which provides in part:

> "(1) The term 'State (except when used in Section 531) includes Alaska, Hawaii, and the District of Columbia."
>
> "(2) The term 'United States' when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia."

Chapter 3, of the Extraordinary Session of the 1937 Legislature, creates a department known and designated as "The Department of Public Welfare for the Territory."

Section 3, of said Chapter 3, provides, in part, as follows:

> "(a) To administer old age assistance, aid to dependent children and to blind persons, and such other relief to the destitute as may be assigned to it; and to receive and expend all funds made available to the Department by the Federal or Territorial Government."
>
> "(e) To cooperate with the Federal Government in matters of mutual concern pertaining to old age assistance, aid to dependent children, blind persons and such other forms of public assistance as may come within the purview of this Act."
>
> "(g) To cooperate with the Federal Government, its agencies or instrumentalities in establishing, extending and strengthening services for the protection and care of homeless, dependent and neglected children in danger of becoming delinquent, and to receive and expend all funds made available to the Department by the Federal Government, the Territory or its political subdivisions for such purpose."

Section 4, of said Chapter 3, provides as follows:

> "It is hereby declared to be the public policy of the Territory to cooperate and coordinate with the United States Government and its established or created agencies in providing for and administering the laws of the Federal and Territorial Governments,

having for their purpose old age assistance and such other assistance as may be provided for or extended to the people of the Territory, and for that purpose and to that end this law is enacted."

Section 1791, Compiled Laws of Alaska, 1933, provides that the Governor of Alaska is the supervisor of the poor, which Section was amended by Section 1, Chapter 5, Laws of Extraordinary Session of the 1937 Legislature, and provides by such amendment that the Board of Public Welfare is vested with the entire and exclusive superinendence of the needy, with authority to delegate its powers and duties provided for in this Act to the Director of Public Welfare."

We hardly think it necessary for us to attempt to construe the aforesaid Section 1823, by either adding thereto or taking therefrom. We may only infer that the Social Security Act, to wit, Chapter 531, Act of Congress approved August 14, 1935, hereinbefore referred to, and Chapters 3 and 5, of the Laws of the Extraordinary Session of the 1937 Legislature, must be construed to mean what is said therein, and it is certain that the Social Security Act embraces the Territory of Alaska and its citizens, and the duties incumbent thereunder have been properly conferred upon the Department of Public Welfare, of which you have the honor of being Acting Chairman.

Further, it is the opinion of this office that if the Department of Public Welfare has proper assurance that the Natives and Eskimos, residents of the Territory, who may be needy, are provided for by the Interior Department out of funds in the Treasury of the United States, it certainly would be at liberty to deny such applicant any other or further assistance, but it will be necessary for the Department to have ample proof of such facts before it would be at liberty to disregard such application. The term "ward of the Government of the United States" in no way changes the applicant's citizenship as a citizen of the United States. The Congress in enacting the Social Security Law made no provisions whatever for the exclusion of

any citizen of the United States, regardless of the fact that he may be a ward of the Federal Government. We conclude that discrimination in granting relief to the needy in Alaska will not stand before a Court of Justice.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Territorial funds appropriated for a specific purpose can be used only for that purpose and no other.

August 14, 1937

Hon. William B. Kirk, Director
Department of Public Welfare
Juneau, Alaska

Dear Mr. Kirk:

Your letter of yesterday received, and your request noted.

You say "The interpretation of the Board of Public Welfare is that a portion of the $150,000.00 appropriated under Chapter 9 of the Extraordinary Session Laws of Alaska, 1937, is available to help defray the expenses of the Board of Public Welfare in administering public welfare legislation."

Chapter 82 Session Laws of Alaska, 1937, (General Appropriation Bill for the biennium beginning April 1, 1937, and ending March 31, 1939), provides, among other things, allowances for certain aged residents, as follows:

"Allowance for certain aged residents of Alaska, as provided by law $400,000.00
Contingent expenses necessary to carry above appropriation into effect ..... 3,000.00"

making a total of $403,000.00 thus appropriated for old age assistance and expenses in carrying the same into effect.

Section 2 of Chapter 9, 1937 Extraordinary Session provides, as follows:

> "That there be, and there is hereby, appropriated out of any moneys in the Treasury of this Territory the sum of One Hundred Fifty Thousand Dollars ($150,000.00) to carry out the provisions of that certain Act entitled 'An Act relating to and providing for old-age assistance, accepting the provisions of Federal legislation for old-age assistance, declaring its effective date, and repealing all Acts and parts of Acts in conflict with any provision hereof' as approved April 2, 1937; the said sum so appropriated shall be covered by the Treasurer into the Old-Age Assistance Fund."

Section 1 of Chapter 10, of said Extraordinary Session provides, as follows:

> "There is hereby appropriated, out of any moneys in the Treasury, not to exceed the sum of Twenty Thousand Dollars ($20,000.00) to defray the expenses of the Board of Public Welfare."

From the above quoted sections of our statutes, you will note the exact amount, to wit, $23,000.00, that was appropriated to defray the expenses of the Board of Public Welfare for the biennium ending March 31, 1939.

Hence, the question presented in your letter, to wit: Can any part or portion of the aforesaid $150,000.00, appropriated in Section 2 of Chapter 9 aforesaid, be applied in payment of administrative expenses for your office in the administration of that law?

It hardly stands to reason that the Legislature would enact a statute creating an office or commission and define, in a measure, its duties, and fail to provide the necessary funds to pay such officials and clerical help necessary in administering the same, but it is apparent from a careful consideration of the statutes above referred to, there was a failure to make such provisions, save and except the aforesaid sum of $23,000.00, and if we can not legally construe Section 802, Compiled Laws of Alaska, 1933, as amended by Chapter 27, Session Laws of Alaska, 1937,

relating to deficiencies, in such a manner as will bring the question under consideration within the exception clause of said statute, we are forced to the conclusion that you have at your command, for the purposes stated in your letter, the sum of $23,000.00, and no more. However, under the provisions of the exception clause contained in said Chapter 27, we believe it possible that on the proper presentation of your question, above submitted, to the Board of Administration, the exceptions in said statute therein provided, with reference to deficiencies, may be applicable, and sufficient funds provided to care for the necessary expenses of your office in carrying out the evident purpose for which your office was created.

Under date of August 14, 1937, we wrote you on the above subject, to which letter we now respectfully refer you in further consideration of the subject under discussion.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Territorial Treasurer does not act as the official Treasurer of the Territory in the receipt and disbursement of Alaska Unemployment Compensation Commission funds.

July 5, 1938

Hon. Frank A. Boyle
Auditor of Alaska
Juneau, Alaska
Dear Mr. Boyle:

Your letter of June 29, relative to the receipt and disbursement of funds by the Unemployment Compensation Commission of Alaska, received and considered.

Prior to the receipt of your letter, the subject matters referred to therein had not been called to my attention officially, and I thank you for the same. However, on examination of the statutes referred to in your letter, I

find some marginal notes made by me on Sections 9 and 14 of Chapter 4, Laws of Extraordinary Session, 1937, and also on Section 3188, Compiled Laws of Alaska, 1933.

The language used in Subsection (b) of Section 9, of said Chapter 4, Laws of 1937 Extraordinary Session (correctly quoted by you), when considered in connection with Subsection (a) (1), (2), (3), (4) and (5) of said Section 9, does not involve the Territorial Treasurer as such official, or his duties and obligations to the Territory, but does make him the Treasurer and custodian of the funds of the Unemployment Compensation Commission, and further authorizes him as the Treasurer of said Commission to administer the same under its directions.

The "Special Fund," which we may rightfully call the "administrative fund," provided for in Section 13 (a) of said Chapter 4, 1937 Extraordinary Session, may be administered and paid out upon warrants drawn upon the Treasurer, as such Territorial official, by you as the Auditor of Alaska, said "Special Fund" being a joint fund provided by the Federal Government and the Territory of Alaska for administrative purposes only. It will, therefore, become necessary for the Territorial Treasurer to pay such warrants for administrative purposes when drawn by you as Auditor of Alaska, pursuant to the directions of said Unemployment Compensation Commission. With the one exception, you, as the Auditor of Alaska, are neither authorized or directed to draw warrants on funds, in the treasury of said Unemployment Compensation Commission, or on the Treasurer of said Commission.

All funds collected by or coming into the hands and possession of said Commission, with the exception of the administrative fund above referred to, must be covered into the United States Treasury by the Treasurer of such Commission, and there remain to the credit of the Territory's account, and subject only to the requisitions made by said Commission pursuant to Subsection (c) of said Section 9, Chapter 4, Laws of 1937 Extraordinary Session.

It is the opinion of this office that Section 3188, Compiled Laws of Alaska, 1933, as amended by Chapter 6, Session Laws of Alaska, 1935, has no application to the subject under consideration, the payment of administrative expenses of said Commission excepted, as above stated.

The statute does not authorize or direct the Territorial Treasurer in his official capacity, to either collect, accept, or disburse, Unemployment funds. The Territory created an Unemployment Compensation Commission for the purposes declared in said Chapter 4, and for no other purpose or purposes, and by reference to Title III, Chapter 531, and to Section 904 (a), Title IX, of the Act of Congress approved August 14, 1935, we note the duties of the Commission created by Chapter 4 of our statute very closely correspond with the duties of all State Commissions provided for under said above entitled Act of Congress.

The bond of the Treasurer and custodian of the funds of our Commission, authorized and directed under Subsection (b) of said Section 9, Chapter 4, must be made by and as the Treasurer of the Commission, and not as the Treasurer of Alaska, and made payable to the Commission in case of default. The Treasurer of the Territory of Alaska, as such, is not authorized to act in his official character.

Sincerely yours,

JAMES S. TRUITT,

Attorney General.

Alaska Territorial Employment Service can not hire and pay a wage to person employed part-time, who receives for such employment in excess of $2400.00 annually.

March 21, 1938

Jos. T. Flakne, Director

Alaska Territorial Employment Service

Juneau, Alaska

Dear Mr. Flakne:

Your letter of March 18 received, in which you request

an opinion of this office relative to the matters and things therein contained.

You say that: "The Alaska Territorial Employment Service, whose personnel standards are governed by the United States Employment Service, intends to open an employment office which will not require the services of a full-time employee. The services of an employee whose educational and business training meets the requirements specified by the United States Employment Service can be obtained, but since he is employed part-time by a private business organization and receives a salary which exceeds $2400.00 annually we ask you if it will be legal to hire and pay a wage to such an employee."

While the Alaska Territorial Employment Service is affiliated with the United States Employment Service, that fact alone does not alter or in any way amend, repeal, or change, the Territorial statute relative to the prohibition of public officials engaging in additional, or accepting employment for, compensation, as provided in Chapter 41, Session Laws of Alaska, 1935, which reads, in part, as follows:

> "Section 1. It shall be unlawful for any executive, judicial, ministerial, or other officer or employee of this Territory, or of any municipality, school district, road district, or other legal subdivision thereof whose average salary, wage, pay or compensation is Two Hundred Dollars ($200.00) per month or more to engage in any additional or accept employment for compensation while in such employ."

Section 2, of the statute above referred to, provides a penalty, upon conviction, for the violation of said Section 1 of from $100.00 to $500.00, and disqualifies such person from entering the service of the Territory, municipality, school or road district, or other legal subdivision thereof, for a period of two years after discharge, and Section 3 of said Chapter prohibits payment to public officials accepting other employment, and provides a like penalty upon conviction for violating the provisions of said Section.

Therefore, it is the opinion of this office that it would be illegal to employ such an individual as the one described or referred to in your letter.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Employees of dairies operating in Alaska can not be classified as agricultural labor; when dairymen changes status from producer to tradesman, exemption as agriculturist can be claimed.

Workers on floating cannery, not members of crew but signed on ship's articles, whose duty is in the processing and canning of salmon, are not exempt from provisions of Unemployment Compensation statute.

Fishermen in Bristol Bay District should be classed as cannery workers.

Insurance agents can not be deemed independent contractors.

July 21, 1937

Hon. Walter P. Sharpe, Director
Unemployment Compensation Commission
Juneau, Alaska

Dear Mr. Sharpe:

Your letter of July 19th received, and your request for an opinion of this office on the questions propounded therein, noted.

Request No. 1: "Are the employees of the dairies that are operating in Alaska, classified as agricultural labor? If so, are the men distributing their products under the same classification?"

We have considered Chapter 4 of the Extraordinary Session of the Territorial Legislature, 1937, relative to the unemployment features of our Alaska Unemployment Compensation Law, as well as the Act of Congress approved August 14, 1935, Section 907, Chapter 531, Statutes of the United States, and without quoting herein from

either of the aforesaid statutes on the question quoted above,

It is the opinion of this office that "the term 'employment' shall not include agricultural labor," as used in this Act, must be construed to mean that agricultural labor and dairying labor are synonymous, and so long as the dairyman maintains his dairy herd and his dairy farm, and provides the same with provender raised in whole or in part on such farm, he, as well as his employees thus engaged, is exempt, provided, that in processing and marketing the produce of his farm, he deals only with and in the products produced on his farm. Receiving stations, whether incorporated as such or not, formed or organized to receive, market, and/or distribute agricultural products, including the products of the dairy farm, and its or their employees, can not claim such exemption, though the dairyman and/or his employees may be stockholders in, or incorporators thereof. When the dairyman changes his mode of business from that of an actual producer to a tradesman, either in part or in whole, he, as well as his employees, can not claim an exemption as agriculturists, horticulturists, or floriculturists.

Request No. 2 "Are the workers on a floating cannery, that are not members of the crew, but are signed on ship's articles, whose duty is in the processing and canning of salmon, to be considered as members of the crew?"

The fact that such workers are signed on the ship's articles does not make them members of the ship's crew, and they are not exempt and can not claim an exemption thereunder. The ship's crew are those employees thereon necessary to the navigation of such vessel. Such workers as referred to in your request, above quoted, or any other cannery worker, can not legally claim exemption on the ground that he was a signer on the ship's articles.

Request No. 3: "Are the fishermen in Bristol Bay to be considered as members of the crew on navigable waters, when they are actually engaged in the taking of fish?"

This request presents a local condition in contradistinction to a general proposition, for the reason that we know and are familiar with the history and methods employed in taking fish in the Bristol Bay District. It is a well known fact that from 75 to 90 per cent of the fish taken in that district during any fishing season are taken by fishermen employed in the Continental United States by large cannery companies, and are shipped to Alaska for the purpose of taking fish for their employers, and are paid for their services largely, but not wholly, on the number of fish taken and delivered to their employers. The payment for their catch and delivery, as above stated, is made to each individual on his return to the States, where he was employed and from whence he embarked, plus "run money" contracted at the time of his employment. Hence,

In my opinion, such fishermen are employees of the cannery employing them, and should be classed as cannery workers, and are, therefore, not exempt under the law on the ground of being independent contractors, or on any other ground that can be legally claimed. Their product was sold to their employers for a specific sum on delivery, and they were at no time dependent for the disposition of their catch on the open market.

Request No. 4: To your fourth and last request, "Are insurance agents deemed to be employees of their respective insurance companies, or independent contractors, under the Alaska law?"

As a general rule of law, an agent can bind his principal, but in matters of insurance, whether life, fire, accident, or other class of insurance, an agent of his company may make a conditional agreement, which may terminate in a contract, but such agreement before becoming a contract must meet with the approval of his principal, and not otherwise. The fact that such agent depends on commissions for his salary can not make him an independent contractor. His commission is not due or payable until

his agreement has been accepted by his principal. Therefore, such agent can not claim an exemption.

Respectfully submitted,
JAMES S. TRUITT,
Attorney General.

Tips received by an employee from person other than employer during course of employment are not deemed to be wages.

November 24, 1938

Hon. Walter P. Sharpe, Director
Unemployment Compensation Commission of Alaska
Juneau, Alaska

Dear Mr. Sharpe:

In answer to your verbal request for an opinion of this office in re employer's liability under the Social Security Act (Act of Congress approved August 14, 1935), and Chapter 4, Extraordinary Session of the Thirteenth Session of the Territorial Legislature, to contribute to the Commission, as legally required, percentages, based on wages paid his employees, including gratuities and gifts made or paid to his employees while in his service by customers of his, such gifts being usually designated as "tips," we would say that:

The Territory of Alaska has no statute requiring employees of any person, corporation, company or association, to report or make known to his employer any gift or tip he may or shall receive from a customer of his employer.

Section 907 (b), of the Social Security Act, provides as follows:

> "The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash,"

which we must construe to mean the percentage he is required to pay, based on actual wages he pays his employee.

Section 7 (a) (1), Chapter 4, of our Alaska Unemployment Compensation statute, above referred to, provides, in part, that:

> "Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulation as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ."

Therefore, it is the opinion of this office that such gratuities and gifts thus made and paid to such an employee do not constitute "wages" in any sense of the word, for the reason the employee is not required to report to his employer any gifts or tips that he may or shall receive during the course of his employment from others in no way associated or financially connected with his employer.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Agricultural fairs may be considered agencies of the Territorial Government.

March 3, 1937

John H. Kelly, Esq.
Attorney at Law
Fairbanks, Alaska

Dear Sir:

Your letter of February 23rd received, and your request noted.

Sections 551 to 557, inclusive, Compiled Laws of Alaska, 1933, appear to embrace all the laws we have on the subject of "Agricultural and Industrial Fairs" in Alaska.

Section 551, Compiled Laws of Alaska, 1933, provides that: "Agricultural and industrial fair associations incorporated under the laws of the Territory, may receive Territorial aid in conducting and maintaining annual agricultural fairs as hereinafter provided."

Three such non-profit associations have been incorporated under our non-profit domestic corporation laws, viz., Southeastern Alaska Fair Association, incorporated February 3, 1923; Western Alaska Fair Association, incorporated December 23, 1921, and the Northwestern Alaska Fair Association, incorporated December 23, 1931. Each divisional fair that has been held since the enactment of our statute has received Territorial aid, but the question that presents itself to me, and the question presented by your letter, is, "Does the contribution from the Territory, aiding such associations in the maintenance of such fairs, make such association an instrumentality of the Territory?" We know that the associations are in no sense corporations for pecuniary profit, but exist for the purpose of promoting the public interest in the business of agriculture and industry. Such associations are public, or have public and educational purposes, to improve agricultural and kindred interest industries, and to furnish the people with harmless amusement and entertainment. The nature of such associations depends entirely upon the statute under which they are created. They have been held variously to be private, public and quasi public corporations, and in some cases they are said to be departments or agencies of the state.

You will note that Section 552, Compiled Laws of Alaska, 1933, provides the maximum amount the Territory is authorized to pay in any one year, in aid to any such fair, is $2,000.00, and

That Section 555, Compiled Laws of Alaska, 1933, provides the minimum amount to be $250.00, and

That Section 553, Compiled Laws of Alaska, 1933, provides that all money paid by the Territory in aid to such fair, or fairs, depends upon the contingency, that is to say, on matching amounts.

We believe that under the provisions of Sections 554 and 556, Compiled Laws of Alaska, 1933, that such fairs may well be considered agencies of the Territory of Alaska, since the Governor of Alaska reserves to himself the right

to collect and ship out of the Territory certain of the displays exhibited at such fairs, and under Section 556 to direct such association to expend certain monies out of the aid granted by the Territory for the purpose of buying nonperishable exhibits to be held by the association subject to his orders.

We thank you for calling our attention to the matter, and we believe you will note our opinions from the above statements.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Chapter 63, Session Laws of Alaska, 1937, declared constitutional.

September 30, 1937

Walter H. Hodge, Esq.
Attorney at Law
Cordova, Alaska

Dear Mr. Hodge:

Your letter of September 24 received, and your request noted.

As to the intent of the Territorial Legislature in the enactment of Chapter 63, Session Laws of Alaska, 1937, I am unable to state, except as such intent may be ascertained from a careful reading and consideration of said chapter. Inasmuch as the Act is not in the least ambiguous, it, therefore, requires no construction on our part, nor even on the part of the Court, for we are not at liberty to place any construction upon an unambiguous statute different from the plain intent expressed therein.

It is certain that said Chapter 63, or Section 3 thereof, is not and can not be construed as an ex post facto law. There is a distinction between ex post facto laws and retrospective or retroactive laws. Every ex post facto law must necessarily be retrospective, but not every retrospective law is an ex post facto law. Ex post facto laws are generally prohibited by the United States Constitution, and also

by the constitution of some states. Ex post facto laws, as used and referred to in the United States Constitution, are to be taken in a limited sense as referring to criminal or penal statutes alone, and do not extend to civil causes, to cases that merely affect the private property of the citizens. The United States Constitution does not prohibit states from enacting retrospective laws generally. Some of the most necessary acts of legislation are, on the contrary, founded on the principles that private rights must yield to public exigencies, and, from my viewpoint, the cause of action referred to as pending in your Court and depending upon a Court interpretation of said Section 3, of said Chapter 63, for the settlement of the same, is one of those cases.

I do not see what could be gained by attacking the constitutionality of said Section 3, for the reason that the employer as a policy holder, insuring his employees against accident, would certainly have his remedy on his policy against the company issuing same if in force on the date of accident to his employee, without any reference whatever to the Alaska Workmen's Compensation Act. The fact that the accident occurred prior to the enactment of said Section 3 in no way militates against the provisions of the policy, or in any way relieves the company issuing the same.

It is well within the power of the Territorial Legislature to enact laws, prescribe, define and direct, modes and manner of procedure in the Courts of the Territory. If there is a statute prohibiting the bringing in of any new or additional necessary parties in any action pending in our Courts, my attention has not been called to the same, and it is my opinion that a complete determination of the controversy referred to in your letter can not be had without the presence of the insurer, since he has an interest in the controversy. The employer and the insurer of such employer having an interest in the subject of the action may be made defendants.

Without continuing this to any greater length, suffice it to say that, in my opinion, Chapter 63, Session Laws of Alaska, 1937, is constitutional, and that the insurer should be made a party defendant in said action. The fact that the insurance was in effect on date of accident to employee is sufficient to make insurer an interested party defendant.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Tax titles on real property are good if law fully complied with on property located in incorporated municipalities, school and utility districts.

November 26, 1937

Hon. John E. Pegues
Territorial Manager
Federal Housing Administration
Juneau, Alaska

Dear Mr. Pegues:

This is to acknowledge receipt of your letter of November 23, 1937, requesting an opinion of this office on the subject of tax titles to real property in Alaska.

We have carefully considered your letter and noted your statements made therein.

You say, in substance, that the Federal Housing Administration has been considering the question of the acceptability by banks of mortgage loans on tax titles, and more particularly at this time the acceptance of such titles for loans on tax titles in Alaska, and that such titles are generally acceptable to lending institutions of the Territory.

We must first call your attention to the fact that we have no general Territorial laws taxing real or personal property in Alaska, except that municipalities and duly incorporated cities of the first and second class, as well as

duly incorporated public utility districts and school districts, may, and generally do, provide by ordinance in such cities and districts for the levying, assessing and collecting of taxes on all property, both real and personal, located and belonging to the citizens and/or owners and holders of such property therein, for general, municipal and school purposes.

Section 2439, Compiled Laws of Alaska, 1933, gives to such cities and/or districts, a lien on all such property thus taxed for the payment of the same.

Section 2441, of said statute, provides for the foreclosure of such liens in the United States District Court, in the judicial division wherein the property assessed is situated.

Section 2442 provides for the procedure in such court for the foreclosure of such lien.

Section 2443 provides for the judgment and order of sale of such assessed property.

Section 2447 authorizes the issuance of certificates of sale, subject to redemption within two years thereafter.

Section 2449 provides that holders of such delinquent certificates are entitled to a deed at the expiration of period of redemption (two years from date of sale), and

Section 2450 provides for redemption after the issuance of a deed to the purchaser or his assignees.

Therefore, to the question submitted, to wit, "Are such titles good?",

It is the opinion of this office, based on the procedure necessary to the foreclosure of such tax lien under the last mentioned section, namely, Section 2450, Compiled Laws of Alaska, 1933, that in order to cancel a deed thus issued under the provisions of the other sections of our statute, above cited, that said deed will be sufficient to convey the title. Of course, this opinion is based on the presumption that such city and/or incorporated district has fully complied with the law in levying, assessing, giving notice of delinquency, issuing certificates, judgment

and order of sale on foreclosure of lien in the proper court, and the validity of such sale must be determined by an abstract of the title of such property thus sold, which must be determined by such abstract and compared with the statutes authorizing the foreclosure and sale of such property.

We believe that the above fully answers your every question.

Sincerely yours,
JAMES S. TRUITT,
Attorney General.

Unexpended appropriations not specifically provided for, revert to Treasury of Territory.

January 14, 1938

Hon. Frank A. Boyle
Auditor of Alaska
Juneau, Alaska

Dear Mr. Boyle:

This is to acknowledge receipt of your letter of January 11, with enclosure, to wit, a letter (undated) from A. Polet, Secretary-Treasurer, Northwestern Alaska Fair Association, of Nome, Alaska, relative to Territorial aid to the conduct and maintenance of agricultural and industrial fairs at Nome, Alaska, during 1938.

Mr. Polet, as Secretary and Treasurer of the Association, says that: "The Board of Directors of the Northwestern Alaska Fair Association views this matter that as a matter of fact we held no fair for the years of 1934-35 and 36 for the reason that we had no hall or facilities after the fire to hold a fair and the first fair we had was last spring which ended in the month of April. On April 8 we applied for the allowance for that particular fair which was paid to us before the first of July. We are under the impression and probably we are right that that payment is a part of the allowance appropriated by the Legislature for the years of 1935 and 1936 and the allow-

ance just received is the first payment on the appropriation made by the last Legislature for the biennium July 1, 1937 to July 1, 1939."

We note from Mr. Polet's letter and from your letter, that the Northwestern Alaska Fair Association held two fairs at Nome during the year of 1937, one in April and one in August, and that such Association applied for and received Territorial aid in conducting and maintaining each of said fairs, the sum of $1,000.00, or a total sum of $2,000.00 during the year of 1937.

It further appears that the Association is under the impression that the Territorial aid applied for and received in conducting its April-1937 fair, was an allowance for such purposes out of the 1935-1936 appropriation, and the aid allowed for the August-1937 fair, in the sum of $1,000.00, was out of the 1937-1938 appropriation.

We have carefully noted the various appropriations made by the Territorial Legislature in aid of such fairs, pursuant to law, that is to say, under Sections 551 to 557, inclusive, Compiled Laws of Alaska, 1933, since 1927 to 1937, inclusive, (no appropriations for 1933-1934), and we have failed to find where an appropriation made by the Legislature for the biennium designated, for the purpose of aiding industrial fairs in Alaska, has been carried over, or the payment of such appropriation, or any part thereof, authorized after the expiration of the biennium in which same was appropriated. Hence in the absence of a provision, or any provisions, in our Organic Act or Territorial statutes, authorizing the payment of appropriations made by the Legislature after the expiration of the biennium in which and for which the same were made, we come face to face with the only real question that presents itself in Mr. Polet's letter, to wit, a "continuing appropriation." Therefore,

In the absence of any provisions in our Organic Act, or in any of our statutes, as above stated, authorizing the payment of an appropriation made by the Territorial Legislature after the expiration of the biennium in which and

for which the same was made, we must resort to other sources for our authority, if any, that will warrant the Board of Administration to authorize you to make further payment of aid for such purpose, provided that the aid granted in the sum of $1,000.00 for the April-1937 fair was an allowance out of the 1937-1938 appropriation for aiding and conducting such fair. Your records are the best evidence in determining that fact. It is certain that said Association has received $1000.00 out of the 1937-1938 appropriation for its August-1937 fair, and if the $1,000.00 received by it for its April-1937 fair was also allowed and paid out of the 1937-1938 appropriation, then, and in that event, said Association has received its pro rata share of the 1937-1938 appropriation, since the 1937 Legislature appropriated as an aid to agricultural and industrial fairs in the Territory for the biennium 1937-1938 the sum of $8,000.00, to be equally divided between the four Judicial Divisions, and subsequent to the making of such appropriation the Board of Administration authorized the payment of one-half, or the sum of $4,000.00 of said appropriation to be used for the purposes stated for the year 1937 and will, no doubt, authorize payment of the remaining sum of $4,000.00 for the year 1938, which, as you know, will completely exhaust the 1937-1938 appropriation.

If such Association's request for additional aid in conducting a fair during 1938 shall be allowed, we must resort to authority aliunde, re "continuing appropriations." By reference to Section 396, page 257, 59 C.J., you will note the following: "In the absence of a specific constitutional prohibition, the Legislature may make continuing appropriations, that is, those the payment of which is to be continued beyond the term or session of the Legislature by which they are made. The effect of adopting such a continuing appropriation is the same as if its terms were written into the successive appropriation bills as and when they are passed, and an appropriation once effectively made and not containing any time limitation will stand until annulled by some constitutional statute."

Funds appropriated by the Legislature at each biennium session in aid of agricultural and industrial fairs in Alaska are not funds accumulated from any particular source for such purposes; in other words, such appropriations are not earmarked, but must be paid, if at all, out of the General Fund of the Territorial Treasury on warrants authorized by the Governor of Alaska—Sections 551, 552, 553, Compiled Laws of Alaska, 1933.

The authority to make an appropriation of state moneys is vested exclusively in the legislature, and no commission or individual has any power whatever to expend the public moneys without a legislative appropriation therefor,

Holmes vs. Olcott, 189 Pac. 205.

In I Words and Phrases, page 471, we find: "Appropriation is the setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other.

To appropriate means to allot, assign, set apart, or apply to a particular use or purpose. An appropriation, in the sense of the Constitution, means the setting apart a portion of the public funds for a public purpose, and there must be money placed in the fund applicable to the designated purpose to constitute an appropriation.

An appropriation of money to a specific object is an authority to the proper officers to pay the money because the auditor is authorized to draw his warrant upon an appropriation, and the treasurer is authorized to pay such warrant if he has appropriated money in the treasury.

In the leading case of Ristine vs. State of Indiana, 20 Indiana, 328, the Supreme Court of that State said: "Appropriation, as applicable to the general fund in the treasury, may, perhaps, be defined to be an authority from the legislature given at the proper time, and in legal form, to the proper officers to apply sums of money out of that

which may be in the treasury, in a given year, to specified objects or demands against the state."

In a well considered opinion by Justice Wolverton of the Supreme Court of Oregon, in the case of Shattuck vs. Kincaid, 49 Pac. 758, the Court said: "An appropriation is a setting aside or designation of particular funds for the discharge of certain definite and specified obligations and may relate to a fixed amount of liability or to one that is continuing." And, then, the Court continues the opinion by saying: "No particular expression or set form of words is requisite or necessary to the accomplishment of the purpose and the appropriation may be prospective as well as in praesenti, that is, it may be made in one year of the revenues to accrue in another or future years, the law being so framed as to address itself to such future revenues."

Also, see Humbert vs. Dunn, 24 Pac. 111; Proll vs. Dunn, 22 Pac. 143, holding that in every instance it becomes a question of legislative intent to be gathered under the settled rules of interpretation from the language employed, the context, the necessity for the enactment, and the purpose to be accomplished, considered in the light of contemporaneous circumstances.

In order to correctly interpret our statutes on appropriations for the years 1935, 1936, 1937, 1938, we must first consider the titles to such appropriation acts:

Section 1, Chapter 82, Session Laws of Alaska, 1937, provides: "The sum of Two Million, Six Hundred Thirty Four Thousand, Nine Hundred Thirty Dollars or so much thereof as shall be found necessary, is hereby appropriated out of any moneys in the Treasury of the Territory of Alaska not otherwise appropriated, for the expenses of the Territory for the fiscal year beginning April 1, 1937, and ending March 31, 1938, and for the fiscal year commencing April 1, 1938, and ending March 31, 1939, said sum to be apportioned according to the following schedules

* * * * ."

Section 3188, Compiled Laws of Alaska, 1933, provides: "The Treasurer shall exercise the following functions and discharge the following duties * * * * ."

Subsection (b) of said Section 3188 provides: "He shall disburse public moneys only upon warrants drawn upon the Treasurer by the Auditor, or as otherwise provided by law not inconsistent with this chapter. Such warrants shall be paid by the Treasurer when presented and from proper appropriations, but funds shall be retained in the treasury to meet payments of all warrants issued prior to the ones presented and paid."

Subsection (d) of said Section 3188 provides: "He shall pay no money or funds out of the treasury except in pursuance of laws authorizing the payment thereof, and whenever any moneys are paid they shall be paid from the appropriation provided therefor and from no other fund." Subsection (e) of said Section 3188, provides: "He shall keep a fair, true, just and comprehensive account of all moneys received, showing source thereof, and of all moneys disbursed, showing when paid, to whom, for what purpose, and from what appropriation."

Subsection (f) of said Section 3188, provides: "He shall keep a just and true account of each appropriation made by law and of the disbursements made under each appropriation."

We believe that from the above you will be able to ascertain our opinion on the subject under consideration, that is to say, if the $1,000.00 allowed and paid to such Association for its April-1937 fair, was, or can be deducted from the 1935 appropriation, then, and in that event, such Association will be entitled to additional aid for its 1938 fair in the sum of $1,000.00, but if the aid received by it for its April-1937 fair was not, and can not be deducted from the 1935 appropriation, we must conclude by saying that the Northwestern Alaska Fair Association has received its pro rata of the 1937-1938 appropriation, and has nothing further coming from the Territory of Alaska.

We herewith return Mr. Polet's letter which was enclosed in your letter of above date.

Sincerely yours,

JAMES S. TRUITT,
Attorney General.

REPORT

OF THE

Attorney General of Alaska

January 1, 1935-December 31, 1936

BY

JAS. S. TRUITT
ATTORNEY GENERAL

REPORT

OF THE

Attorney General of Alaska

January 1, 1935-December 31, 1936

BY

JAS. S. TRUITT
ATTORNEY GENERAL

Juneau, Alaska
December 31, 1936

Honorable John W. Troy
Governor of Alaska
Juneau, Alaska

Sir:

I have the honor to submit to you, and through you to the Honorable Territorial Legislature, a report of the administration of this office for the period January 1, 1935 to December 31, 1936.

Respectfully,

JAS. S. TRUITT,

Attorney General of Alaska.

REPORT
of the
ATTORNEY GENERAL
OF ALASKA

JANUARY 1, 1935—DECEMBER 31, 1936

The general work of this office during the last biennium has been much the same as for previous bienniums. By reason of the Attorney General being a member of the following Boards and Commissions, additional services have been necessarily required:

Board of Administration,

Board of Examiners,

Pioneers' Home Building Commission,

Board of Law Examiners,

Board for Promotion of Uniform Legislation,

Board of Liquor Control.

The routine work of the office in giving opinions has been almost twice as great as that during any previous biennium. It has been the aim of this office to give full and complete cooperation to the various Territorial officials, and practically all of these officers have had questions arise in respect to which they have requested opinions, both oral and written. Many vexatious and difficult questions have been presented, and opinions have been given where possible to Municipal officers, and in many instances to Federal officers, wherever and whenever the interests of the Territory or any considerable number of its people were involved. This report will not contain as many opinions as some of the reports in the past, due to lack of funds for the cost of printing. However, a few have been selected

which we feel to be of sufficient importance and are here edited. It is hoped that this session of the Legislature may see fit to appropriate the necessary funds for printing Volume 4 of the Opinions of the Attorney General. This volume should be a compilation of all former volumes as the demand for copies of Volumes 1, 2 and 3, has far exceeded our supply, which at this time is so completely exhausted that no further copies are available for distribution.

It has always been the endeavor of this office to assist the Members of the Legislature in their official work. Many opinions were rendered to individual members during the last session, and various bills and Memorials drafted for introduction.

There will be submitted elsewhere in this report recommendations for changes in some of our present statutes, either by amendment or repeal.

As outlined in Section 664, CLA 1933, this office has communicated with the Judges, District Attorneys, U. S. Commissioners, various civic bodies and many private citizens, in most of the towns and cities in the Territory, requesting them to submit for the consideration of the Legislature at this session suggestions and recommendations for needed legislation, either by the enactment of new laws or by the amendment to, or repeal of, existing statutes. These communications are on file in this office, and are available to all Members of the Legislature for their consideration.

Copies of Memorials and Resolutions passed at the Twelfth Session of the Legislature were addressed to persons and bodies designated, and the following excerpts of acknowledgments may be of interest:

Acknowledgment of House Joint Memorials No. 4 and 19, by Ernest Gruening, Director, Division of Territories and Island Possessions, Department of Interior, Washington, D. C.

> " * * * You undoubtedly have been informed that on March 27 the Public Works Administration ap-

proved a loan and grant allotment to the city of Nome for the sum of $100,000, and that on May 24 the President approved H.R. 5707, an act to ratify and confirm the corporate existence of the city of Nome and to authorize it to undertake certain municipal public works and for such purposes to issue bonds in any sum not exceeding $100,000.

The second memorial recommending that a study be made of the fishing industry in the Territory of Alaska is receiving very careful consideration. We are aware of the basic nature of this industry and some of the problems connected with it and trust that a way may be found to reply with the request contained in the Joint Memorials. * * * "

Acknowledgment of House Joint Memorial No. 17, by John B. Reynolds, Acting Secretary, Federal Communications Commission, Washington, D. C.

" * * * Action on the application of KGBU for authority to operate with 1 kilowatt at night and 5 kilowatts during the day is withheld pending compliance by the station of the Commission's Broadcast Division Order No. 2.

Your interest has been noted, and you may be assured every consideration will be given the matter when it is brought before the Commission for its decision. * * * "

Acknowledgment of House Joint Memorial No. 27, by Harllee Branch, Second Assistant Postmaster General, Washington, D. C.

" * * * Every proper consideration will be given the Memorial with the view to improving the mail supply for Shungnak if found at all possible to do so. * * * "

Acknowledgment of House Joint Memorial No. 20, by Ernest Gruening, Director, Division of Territories and Island Possessions, Washington, D. C.

" * * * Since the passage of Joint Memorial No. 20 there has been a revision in the rules and regulations governing tolls on the Richardson Highway. The new regulations in effect place a toll upon through commercial traffic between Fairbanks and Valdez. This

revision of the rules, I believe, will meet many of the objections touched upon in the memorial. * * * "

Acknowledgment of House Joint Resolution No. 10, by J. B. Allison, Major General, Office of Chief Signal Officer, Washington, D. C.

" * * * Upon receipt of the above mentioned resolution a careful rate study was conducted with a view to determining whether or not a reduction in the rates for radio messages to and from Nome could be effected without jeopardizing the efficiency of the service rendered. The results of this study indicated that a substantial reduction in rates between Seattle and northern Alaskan points and between Southeastern and northern Alaskan points, was justified. Accordingly, a revised tariff schedule, incorporating these reductions, was submitted to the Secretary of War for approval.

I am glad to advise you that the revised tariff schedule has received the approval of the Secretary of War and that reduced rates on long haul messages to and from Nome will become effective on September 1, 1935. The new rates will be published by the Officer in Charge of the Washington-Alaska Military Cable and Telegraph System, Seattle, Washington, and transmitted to the various Signal Corps radio stations in Alaska, including Nome, at an early date. * * * "

Acknowledgment of Senate Joint Memorial, No. 2, by Geo. H. Dern, Secretary of War, Washington, D. C.

" * * * I am highly gratified to note that the Territorial Government considers that the radio telegraph system operated by the War Department in the Territory of Alaska has rendered to the residents of the Territory valuable and consistent service and has assisted in the development of the industries of the Territory.

The Signal Corps, U. S. Army, now operates twenty-two radio stations in Alaska, with headquarters at Seattle, Washington. It is assumed that the Joint Memorial mentioned above refers to the reestablishment of the thirteen stations closed during the years 1933 and 1934. The primary reason for closing these stations was the decreasing amount of appropriations made available to operate the System. However, before

any action was taken to reduce the number of stations, a thorough survey of the System was made by the officer in charge. This survey revealed the fact that thirteen of the stations in operation had been established at points in the Territory under conditions that no longer obtained; that there were many communities in Alaska with more requirements for communications than some of those that were served by the Alaska Telegraph System; and that in many instances the traffic handled was so small that its money value was not equal to that of the fuel consumed at the stations, let alone cost of upkeep of the necessary buildings and plant, power, pay and subsistence of the operator, and other operating expenses.

Realizing that, in the event Signal Corps stations were withdrawn, the points at which stations were to be discontinued would be without electrical communication with the outside world, the Chief Signal Officer installed radio telephone transmitters at Ketchikan, Juneau, Anchorage, Fairbanks and Nome, so that commercial companies, communities or private individuals desiring communication with the outside could establish it through purchase and installation of a small, inexpensive radio telephone transmitter. At practically all of the points served by the thirteen stations that were closed, and at a number of other points, either privately or community owned radio telephone stations have been opened and these communities are now served in this way with communications. Thus the new policy made it possible to furnish more communications to Alaska than ever before and still keep within the funds available for this service.

In view of the foregoing and in view of the fact that there appears to be no prospect of obtaining increased appropriations in the near future for operation and maintenance of the Alaska Telegraph System, it is regretted that the War Department is not in a position to reestablish the closed radio stations which are the subject of the memorial of the Legislature of Alaska. * * * "

Acknowledgment of Senate Joint Memorials No. 4 and 8, by Ernest Gruening, Director, Division of Territories and Island Possessions, Washington, D. C.

" * * * I understand that the question of education of the natives of Alaska and its relation to the Terri-

torial school system and Territorial finances is receiving the careful consideration of the Bureau of Indian Affairs and that in all probability a special study will be undertaken upon which to base our future policy. Several conferences have already been held on this subject during the time that Governor Troy and the Territorial Commissioner of Education were in Washington. A survey of the relationship of the Federal and Territorial Governments in connection with the education of the natives of Alaska seems to be the next logical step.

I am informed that the appropriation allowed the Department of the Interior for its exhibit at the San Diego Fair was not sufficient to erect a separate building for individual Territories. Displays from the Territories consist largely of transparencies portraying typical scenes or activities. A number of photographs of scenes in Alaska were chosen and transparencies have been made which will be on display. * * * "

Acknowledgment of House Joint Memorial No. 7, by Milo Perkins, Assistant to Secretary, Department of Agriculture, Washington, D. C.

" * * * By act of Congress of August 24, 1912 (37 Stat. 512) entitled 'An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon and for other purposes,' it was expressly provided 'that the authority herein granted to the Legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to . . . the game, fish, and fur-seal laws and laws relating to fur-bearing animals. . . .'

At the date of the enactment of the foregoing law there was effective in Alaska the game law of 1908 which fairly comprehensively dealt with game and non-game birds and game animals, administration of the Act being divided between the Secretary of Agriculture and the Governor of Alaska. Experience demonstrated that the Act of 1908 was inadequate in many respects to safeguard these resources of the Territory and was in 1925 superseded by the present Alaska Game Law which covers all game animals, land fur-bearing animals, and all game and non-game birds. It does not cover seals and other aquatic fur-bearing animals, which are under supervision of the Department of Commerce.

The Territory of Alaska contains the last great stand of wild life under the jurisdiction of the Government of the United States, and many people in various sections of the country, including sportsmen, conservationists, and lovers of wild life, are deeply interested in insuring its proper and adequate conservation. The withholding by the Federal Government of control over these wild life resources from the Territorial Legislature by the exception in the Organic Act of 1912 (37 Stat. 512) was, therefore, deliberate and with the specific intent to retain such control in the United States. The game and fur animals of Alaska have been one of the most important resources of the Territory since its acquisition by the United States. The pursuit of this wild life is the principal means of livelihood of a large part of the native population. While the Eskimos and Indians of Alaska can not be strictly termed as 'wards' of the Federal Government, they are virtually in that class in that the Federal Government continues to spend much time and money for their education and medical attention. It is through this relationship that these people are largely, if not wholly, dependent upon the guardianship of the general Government. This undoubtedly was also one of the impelling reasons for the limitation contained in the Act of 1912 prohibiting the Territorial legislative authority from altering, amending, modifying, or repealing game, fish, and fur-bearing animal laws in force in Alaska.

The present Alaska Game Law is a most carefully drawn measure, flexible in its provisions, and thoroughly modern and in accordance with the highest development in legislation of this character. It affords representation to Alaskans in wild life protection and utilization by providing for the appointment of a commission of five members, four of whom are required to be residents of the Territory and one to be selected from each of the four judicial divisions of the Territory and provides for the Territory's participation in receipts thereunder without cost as hereinafter set forth.

In administering this law it has been the practice to select as Commissioners those who are specially qualified by their knowledge of the wild life resources of their respective districts. The fifth member, who is the Executive Officer of the Commission, is the chief representative of the Bureau of Biological Survey,

resident in Alaska, and is so designated by virtue of his special knowledge of wild life conditions in the Territory. Upon the recommendations of the Commission, the Secretary of Agriculture adopts regulations under the general provisions of the law prescribing open seasons, bag limits, and restrictions on methods of taking game and fur-bearing animals in the Territory. The Commission with its warden service enforces and administers the law and regulations throughout the Territory. The Commission keeps closely in touch with the wild life conditions of the Territory, as well as the economic conditions of residents and natives, and each year when necessary makes recommendations for modifications in the regulations to meet emergencies and to provide for the welfare of those dependent upon these resources, with due consideration for proper conservation of the several species of wild life. Through the efforts of the members of the Commission and the enforcement personnel of that organization, a very wholesome respect has been developed in most sections of the Territory for proper conservation, and no effort has been spared to educate the people of Alaska along these lines. This Commission continuously has been deeply interested in the conservation of the wild life resources of the Territory and conditions have steadily improved since its inception in 1925, while at the same time the greatest possible use of these resources has been allowed the natives and people of Alaska.

The depletion of the wild life resources in Alaska is fraught with grave consequences. Native Indians, Eskimos, and half-breeds comprise slightly more than half of the population of the Territory, and a great proportion of these natives are largely dependent upon these resources for their food and clothing, and if these resources should be seriously impaired it would have the effect practically of pauperizing large numbers of these peoples, with the result that they would become a tremendous burden upon the Federal Treasury as wards of the Government. Because of this, the continuation of Federal control of these resources is considered advisable; and it is believed that the United States is in better position than the Territory of Alaska would be to deal with transient exploiters.

Administration of the wild life resources in Alaska is not self-supporting. Fees from the sale of licenses and penalties assessed are insufficient to adequately

support the work of protecting and developing these resources. The deficiency is made up from Federal appropriations, and it would seem difficult for the Territory to secure the necessary funds from general Territorial taxation.

In view of what has been stated, this Department is not in a position to assent to the repeal of the present Alaska Game Law or the abolition of the Alaska Game Commission with the view of transferring jurisdiction over wild life matters in the Territory to the Territorial Legislature. * * * "

Daniel C. Roper, Secretary of Commerce, advised that House Joint Memorials No. 6 and 10, relating to salmon fishing in Bristol Bay and to oyster culture in Alaska, were now under consideration by the Department.

BOARD OF LAW EXAMINERS

The following members constitute the Board of Law Examiners:

Jas. S. Truitt, Ex-Officio Chairman .....Juneau
R. E. Robertson, Member .....Juneau
Hugh O'Neill, Member .....Nome
L. V. Ray, Member .....Seward
Chas. E. Taylor, Member .....Fairbanks

An examination for admission to the bar was held at Juneau, August 20, 1935 to August 24, 1935. Four applicants, namely, Norman C. Banfield, Nelson I. Beers, L. B. Chisholm and J. C. Winter presented themselves for examination and passed both oral and written examinations with creditable ratings. The oral examination was given before Honorable George A. Alexander, District Judge, First Division, Juneau. Questions for this examination were prepared and compiled by this office and covered all subjects outlined by Territorial statute.

Chas. E. Taylor, Member of the Board in the Fourth Division, examined one applicant, Sherman Noyes, of Fairbanks, who was given the same examination above referred to. Mr. Noyes also passed with creditable ratings and was admitted to practice.

At this time an examination is pending in the Third Division, which will be conducted by L. V. Ray, Member residing at Seward. We have no way of knowing what expenses will be incurred in conducting this examination, but to date the entire cost of the examinations given during this biennium has been, as follows:

Amount appropriated	$100.00
Expenditures for paper, postage, supplies, etc., in the conduct of examinations Juneau and Fairbanks	21.28
Unexpended balance	$ 78.72

LITIGATION

In an effort to bring to a conclusion a number of estate cases in which the Territory was involved, and which had been dragging along for months and, in many instances, years, this office directed communications to all United States Commissioners in the Territory, asking them to advise regarding all such cases pending in their respective courts. We have heard from most of the Commissioners, but a few still remain to be heard from. However, some of these cases have already been adjusted, and we have at this time some twenty-seven estate cases pending.

Various other matters pertaining to escheated estates have passed through this office in one form or another, including estates of deceased inmates of the Pioneers' Home, Territorial pensioners, etc. It is hoped that the Territorial Legislature will so amend Section 1781, CLA 1933, that the same will require the Board of Trustees of the Pioneers' Home to carefully list all property and property interests owned by the applicant for allowance at the time such allowance is granted, and that the same be made a matter of record in the precinct wherein the property is located as a notice of the lien provided by law in all such cases.

At the time of submitting our report for the 1933-1935 biennium, there was pending in the courts a case of considerable importance to the Territory, Charles Demmert,

et al, vs. Walstein G. Smith, as Treasurer of the Territory of Alaska. This suit was brought for the purpose of enjoining the Treasurer from disbursing or paying out of the Territorial Treasury appropriations involving the sum of $340,000, as follows:

Allowances for certain Aged Residents of Alaska	$185,000.00
Care of Dependent Children, including allowances to mothers and other incidental expenses	90,000.00
Relief of Destitution	20,000.00
Relief of Needy and Indigent	45,000.00

The law making these appropriations was attacked upon the ground that it was not within the legislative power of the Legislature of Alaska to enact such a statute, and was in violation of the laws of the United States, and discriminated against the Indian and Eskimo residents of the Territory. This case has been disposed of in the Circuit Court of Appeals for the Ninth Circuit in favor of the Territory.

The case of the Territory of Alaska vs. The First National Bank of Fairbanks, involving real and personal property of persons dying intestate without heirs, was settled in the District Court for the Fourth Division, at Fairbanks, favorable to the Territory.

In the matter of the estate of Johann Joseph Mueller, known also as Joe Miller, deceased, an attempt was made to establish proof of relationship to the deceased by persons in Germany. This case was disposed of in the District Court for the First Division, at Juneau, favorable to the Territory.

The following cases are now pending settlement in the courts:

Territory vs. Demmert Packing Company, a corporation, in the District Court, First Division. This suit involves delinquent taxes due and owing the Territory.

The case of the Territory vs. The Miners and Merchants Bank of Ketchikan, in the District Court, First

Division, involves real and personal property of persons dying intestate without heirs.

The case of Melville St. Elmo Carscadden vs. the Territory of Alaska, in the District Court, First Division, involves an estate already administered and the funds are now claimed by an heir.

RECOMMENDATIONS FOR LEGISLATION

1. Section 1781, CLA 1933, as amended by Chapter 47, SLA 1935, should again be amended, requiring all applicants for pension allowances to schedule all property, real and personal, owned by such petitioner, before allowances are granted, and further require the Board of Trustees of the Pioneers' Home to file for record in the Recording Precinct wherein such property is located such schedule of property.

Such an amendment is necessary to protect against frauds that are being committed against the Territory annually, to-wit, pensioners disposing of their property a few weeks or days before their demise to some masquerading friend.

2. Section 1459, CLA 1933, should be amended to require payment of same filing fees by Independent candidates as required by candidates filing in Primary Election under sub-section 2 of Section 1502, CLA 1933.

3. Sub-section 1 (a), of Section 3138, CLA 1933, should be amended to require Attorneys at Law to file with the Clerk of the District Court their annual license before filing with the Clerk of the Court any pleading whatever.

4. We believe that Section 7, Chapter 40, SLA 1921, as amended by Chapter 95, SLA 1933, same being Section 2901, CLA 1933, should be further amended or rewritten designating a specific date of limitation on existing causes of action under former statute.

5. Sub-section 6 (c) of Section 3138, CLA 1933, should be corrected to read "on all cases in excess of twenty-five thousand and not more than forty thousand, ten cents per

case" (See Section 1, sub-section 8 (c), Chapter 59, SLA 1927) instead of "on all cases in excess of twenty-five thousand, ten cents per case."

6. Paragraph 2, of Section 2054, CLA 1933, should be amended in such manner that the lien therein provided should be a preferred lien except to Territorial excise taxes.

7. We believe that sub-section 14, of Section 3138, CLA 1933, as amended by Chapter 74 SLA 1935, should be amended or rewritten, more accurately defining the schedule of license taxes imposed, and the valuable metals, ores, earth and rock extracted from the ground, bear different classifications as to license taxes imposed.

8. Section 1353, CLA 1933, should be corrected to correspond with Section 73, Chapter 97, SLA 1929. There is an omission of two lines of Section 73, Chapter 97, SLA 1929, in Section 1353, CLA 1933.

9. We believe that Chapter 84 SLA 1935, amending sections 2161, 2162 and 2172 Compiled laws of Alaska 1933, relative to the payment of compensation to injured workmen etc., should be repealed.

EXPENSES OF OFFICE

	Biennial Appropriation	Amount Expended 12-31-36	Balance 12-31-36
Salary Attorney General	$10,000.00	$8,750.00	$1,250.00
Salary Clerk	4,200.00	3,675.00	525.00
Traveling Expenses	1,000.00	573.80	426.20
Court Costs	500.00	85.20	414.80
Contingent Expenses	850.00	455.80	394.20
Law Books	400.00	277.50	122.50

LEGAL OPINIONS

The following opinions rendered by this office are deemed to be of sufficient interest to the Legislature to warrant submitting them herewith:

1. Birth Certificate to contain full name of father, except for illegitimate children.

2. If mother married and names person other than husband the father of her child, record should recite children legitimate.

3. Illegitimate child should be given surname of mother.

July 18, 1935

Hon. Frank A. Boyle
Auditor of Alaska
Juneau, Alaska

Dear Mr. Boyle:

Your letter of the 16th instant received and your request for an opinion of this office on the questions propounded by Dr. W. W. Collins, M.D., in his letter to you as Registrar of Vital Statistics for Alaska dated June 15th, noted and considered.

In order that my reply to your request may be more comprehensive, I have considered the doctor's questions in the order in which he presents them, that is to say, 1, 2, 3 and 4.

Question 1: "Should the physician record the name of the baby's father as given to him by the mother in cases of illegitimacy?"

We must answer in the negative. Section 3197, Compiled Laws of Alaska 1933, provides inter alia that "The certificate and record of birth shall be of the standard form approved by the United States Bureau of the Census and shall be filed and recorded in all cases where the period of gestation has reached or passed the twenty-fourth week, and shall contain a statement of the place of birth; full name of child * * * ; sex; whether a plural birth, etc.; legitimacy or illegitimacy; full name of father (except for illegitimate children); residence, color or race, etc."

Question 2: "If the mother is married, but names some man other than her husband as the father of the baby, should it be recorded as she states it?"

Again, we must answer in the negative for the reason that children born within lawful wedlock are bastards if the fruit is not of the marriage but of adulterous intercourse,

Parker vs. Nothomb, 93 N.W. 851; 60 LRA, 699,

and for the further reason that there is a strong presumption that children born in lawful wedlock are legitimate, and this presumption can only be rebutted by proof of the impotency of the husband or his absence beyond the seas, or elsewhere, for so long a period before the birth as to make it a natural impossibility that he could be the father,

126 American State Reports, 261 Note.

A child of a married woman by one not her husband is legally called "an adulterine bastard,"

Ives vs. McNicoll, 59 Ohio State, 402; 53 N.E. 60; 69 ASR, 780; 43 LRA, 772.

Therefore, I can not find any legal reason for thus stigmatizing a child born into this world under such conditions and through no fault of his. The record should recite the children as legitimate.

Question 3: "In case the mother of an illegitimate child names the father, whose name does the child take?"

At Common Law a bastard was designated to be filius nullius, a child of nobody, or filius populi, a child of the people. The certificate should recite that the child is an illegitimate, and give it its mother's surname, and without reference to the name of the father as given by the mother.

Question 4 is fully answered in Question 2.

Respectfully submitted,

JAS S. TRUITT,

Attorney General.

Purpose of Chapter 74, SLA 1935, is to provide a graduated scale of license taxes on mining operations in Alaska, and each provision or bracket is complete and determines the percentage due and payable thereunder.

February 13, 1936

Hon. Oscar G. Olson
Territorial Treasurer
Juneau, Alaska

Dear Mr. Olson:

Your letter of January 13th calling my attention to the provisions of Chapter 74, above subject, and requesting my opinion with reference to a proper construction to be placed upon it, came to the office in my absence, hence, pardon for the delay in answering.

Sub-section 14 of Section 3138, CLA 1933, was amended by Chapter 74, SLA 1935, and provides for a graduated excise tax or license tax on the net income derived from mines in Alaska and is now, therefore, the law on the subject. The title to said amendatory statute provides, as follows: "To amend Sub-section 14 of Section 3138, CLA 1933 (Sub-section 16, Chapter 69, SLA 1927) providing for a graduated license tax on the net income derived from mines."

The amendatory statute, then, pursuant to said title, proceeds to define mining as any operation by which valuable metals, ores, minerals, asbestos, gypsum, coal, marketable earth or stone, are extracted from the earth; that the term "net income" means the cash value of the output of the mine less operating expenses, repairs and betterments actually made, royalties actually paid, and all Federal taxes paid under Section 176, CLA 1933, and then provides that the license tax on mining shall be, as follows:

Upon all net incomes:

Over $5,000 and not over $10,000 ..... ¾%
Over $10,000 and not over $50,000 .....1¼%

Over $50,000 and not over $100,000 .....1½%
Over $100,000 and not over $150,000 .....1¾%
Over $150,000 and not over $250,000 .....2¼%
Over $250,000 and not over $500,000 .....2¾%
Over $500,000 and not over $1,000,000 .....3½%
Over $1,000,000 ..... 4%

While the title given to a statute by the law enacting body enacting the same is not always a complete index to its contents, it may, and generally does, give the reader a fair knowledge of its purpose. Therefore, based upon the title to said amendatory act and the schedule above set out, we are forced to the conclusion that the purpose of said statute was to provide a graduated scale of license taxes payable to the Territory on the net cash value of the products of all mining operations in Alaska, and that each provision or bracket in said schedule is complete and determines the percentage due and payable thereunder. For example: A mine produces $50,000, at a cost for labor, betterments, royalties and taxes paid of $20,000. There may be claimed in addition thereto as exempt from taxation an additional sum of $5,000, leaving a balance taxable in the sum of $25,000 set out, as follows:

Production		$50,000.00
Taxes, royalties, etc.		20,000.00
Balance		$30,000.00
on which balance of $30,000, there is an additional exemption of		5,000.00
(See wording of first bracket) leaving a **taxable balance** in the amount of		$25,000.00
on which the tax is computed, as follows:		
Over $5,000 and not over $10,000 (First $5,000 exempted as above — $5,000 taxable at ¾%)	$	37.50
Over $10,000 and not over $50,000 ($20,000 taxable at 1¼%)		250.00
TOTAL TAXES DUE	$	287.50

Without going into further detail with reference as to who are mine owners, lessees, lessors, or operators, or the validity of the statute as a whole, we believe that the above is sufficient to convey our views and our opinion with reference to said Chapter.

Sincerely yours,

JAS. S. TRUITT,

Attorney General.

---

1. Territorial Treasurer is without jurisdiction to appoint School Tax Collectors in incorporated towns and cities.

2. Appointment of a municipal clerk in an incorporated town or city whose salary is $200 or more per month, to collect motor vehicle licenses, is in conflict with provisions of Chapter 41, SLA 1935.

June 28, 1935

Hon. Oscar G. Olson
Territorial Treasurer
Juneau, Alaska

Dear Sir:

Your letter of June 27th received, and your request for an opinion of this office regarding the application of the provisions of Chapter 41, Session Laws of Alaska 1935, in re the collection of School Taxes and Motor Vehicle Licenses, noted.

Owing to the present and past prevailing methods of collecting the above mentioned taxes and licenses, we recognize, in a measure, that the application of the above designated Chapter of our laws is of importance to you as Territorial Treasurer, and to the Territory of Alaska.

Section 1 of the above designated Chapter provides: "It shall be unlawful for any executive, judicial, ministerial,

or other officer or employee of this Territory, or of any municipality, school district, road district, or other legal subdivision thereof whose average salary, wage, pay or compensation is Two Hundred Dollars ($200.00) per month or more to engage in any additional or accept employment for compensation while in such employ." Sections 2 and 3, in which we are not concerned at this time, refer to penalties and forfeiture of office or further employment, etc. This statute has no application to amount of school taxes levied or how collected.

AMOUNT OF SCHOOL TAX LEVIED—Section 3123, Compiled Laws of Alaska 1933, provides inter alia, that all male persons over the age of 21 years and under the age of 50 years, within the Territory of Alaska or the waters thereof, except soldiers, sailors in the United States Navy or Revenue Cutter service, volunteer firemen, paupers, insane persons or Territorial charges, are annually assessed for public school purposes the sum of $5.00.

Section 3124, Compiled Laws of Alaska 1933, provides inter alia—First: It shall be the duty of the Council in each incorporated town to provide by ordinance for the collection of school taxes, and to appoint a collector for such purpose, and—Second: That is shall be the duty of the School Board in each school district outside incorporated towns, to designate a member of such Board, or some other competent person to act as such school tax collector.

Therefore, it is the opinion of this office that the Territorial Treasurer is without jurisdiction with reference to the collection of school taxes in incorporated towns and cities, regardless of the salary paid by such incorporated town or city to its employee collector; the incorporated town or city being responsible to the Territory, and not the collector, for all such taxes collected, less the statutory percentage allowed said town or city for such collections. The provisions of said Chapter 41, Session Laws of Alaska 1935, do not, and can not be made to apply to the incorporated towns or cities, or to the collector of such taxes appointed by such town or city.

Section 3125, Compiled Laws of Alaska 1933, provides that the Territorial Treasurer shall have the power to appoint a person to act as school tax collector, where necessary, in any portion of the Territory, except within the limits of any incorporated town, where in his judgment it would serve the interests of the Territory better than to have a collector in each school district.

Therefore, it becomes necessary to call your attention to Chapter 42, Session Laws of Alaska 1933, Section 1285, Compiled Laws of Alaska 1933, re the reorganization of the Territorial Board of Education, and to Chapter 114, Session Laws of Alaska 1933, Sub-division (b), Section 1289, Compiled Laws of Alaska 1933. By reference to the above sections of our laws you will note that rural school boards were abolished, and all incorporated school districts and rural schools therein, were placed directly under the supervision of the Board of Education. Hence, it becomes necessary for you to appoint collectors of school taxes in all such outlying districts under the provisions of Section 3125, above referred to.

Under the provisions of Section 3136, Compiled Laws of 1933, school tax collectors appointed by you will receive the sum of fifty cents (50c) on each tax collected and no more.

To your second question—Motor Vehicle License—Who shall collect—What application has Chapter 41, Session Laws of Alaska 1935, to collector appointed, I herewith submit the following:

Under the provisions of Section 3154, Compiled Laws of Alaska 1933, it becomes your duty to appoint the Municipal Clerk, or United States Commissioner, in all incorporated towns or cities, and United States Commissioners, where necessary, in all outlying precincts not embraced in incorporated towns or cities as motor vehicle license tax collectors. We have no statute authorizing City Councils to appoint such license collectors. Therefore, collectors of motor vehicle licenses in the Territory are made directly

responsible to the Territory (your office) for all license moneys collected, less a five per cent (5%) commmission on each collection.

It is the opinion of this office that the appointment of the Municipal Clerk of an incorporated town or city whose salary or pay for such clerical service amounts to $200 or more per month, as such motor vehicle license collector, will conflict with the provisions of said Chapter 41, Session Laws of Alaska 1935.

Sincerely yours,

JAS. S. TRUITT,

Attorney General.

Nonresidents under 50 years of age employed in Territory during canning season are subject to school tax.

September 14, 1936

Alaska Cannery Workers Union No. 20195
555 Pacific Street
San Francisco, California

Dear Sirs:

Your letter of August 12, 1936, received in this office during my absence, hence the delay in answering the same.

You say in your letter, "It was our contention that our men under 50 years are not subject to the five dollar school tax in view of the fact that they were not residents of Alaska, nor tourists but laborers who made a scanty wage during the two months and odd days that they remain in territorial waters. We have studied very carefully the School tax law, article 111, sec. 3123 and following up to sec. 3137 and we notice that there is nowhere to be found specifically that workers who are taken to Alaska for the season should be taxed to the extent of five dollars."

It is not necessary for me to quote Section 3123, CLA 1933, inasmuch as you say that you have read and considered same. The identical section of our laws referred to by you, was passed upon by the U. S. District Court in the State of California in the case of Sven Haavik vs. Alaska Packers' Association, and the Court in that case upheld the statute. From the decision rendered therein, Sven Haavik appealed to the Supreme Court of the United States, and the decision of the District Court was affirmed. See

> Sven Haavik, Appellant, vs. Alaska Packers' Association, 263 U. S. Supreme Court Reports, at pages 510, 511, 512, 513, 514 and 515.

Therefore, inasmuch as the highest court in the United States has declared the statute under consideration constitutional, and that the Territory of Alaska has the right to levy and collect such taxes, I feel it unnecessary for me to say more than to refer you to the decision of the U. S. Supreme Court, above referred to.

Sincerely yours,

JAS. S. TRUITT,

Attorney General.

Territorial Board of Education has an insurable interest in school building at Palmer, Alaska.

October 15, 1936

Hon. Anthony E. Karnes
Commissioner of Education
Juneau, Alaska

Dear Mr. Karnes:

Your letter of yesterday received and considered. You state in substance that the Alaska Rural Rehabilitation Corporation at Palmer, Alaska, has requested the Terri-

torial Board of Education to pay for the insurance on the school building situated at that place, which building is valued at the sum of $125,000, and you further state that the Board has no title to the property; that the only record the Board has with reference to the building is to the effect that notice has been given to the Superintendent of the school (we presume by the Alaska Rural Rehabilitation Corporation), stating that the building had been turned over to the Board for its use and, therefore, you request this office to advise you whether or not the Board can legally carry insurance on the building when the Board has no title to it. Hence, the question of insurable interests in such building.

It is a fixed rule of insurance law that insured must have an interest of some kind in the subject matter of the insurance,

> Carpenter vs. Providence Wash. Ins. Co., 16 Pet. 495, 10 L. Ed. 1044; Christman vs. State Ins. Co., 16 Ore. 283, 18 Pac. 466; Neher vs. Western Assurance Co., 40 Wash. 157, 82 Pac. 166.

An insurance interest on the part of the person, company, or association, taking out the policy is essential to the validity and enforceability of the contract or policy. A policy issued to a person, or association of persons, without an interest in the subject matter of the contract is a mere wager policy or contract and is void and unenforceable on the grounds of public policy,

> Conn. Mutual L. Ins. Co. vs. Schaifer, 94 U. S. 457, 24 L. Ed. 251; Spare vs. Home Mutual Ins. Co., 15 Fed. 707.

It is not easy to define with precision what will in all cases constitute an insurable interest so as to take the contract out of the class of wager policies,

> Warnock vs. Davis, 104 U. S. 775, 26 L. Ed. 924.

The test of insurable interest in property is whether insured has such a right, title, or interest therein, or rela-

tion thereto, that will be benefited by its preservation and continued existence, or suffer a direct pecuniary loss from its destruction or injury by the peril insured against. Persons held to have an insurable interest in property, including the holder of the legal or equitable title therein, or the trustee, etc.,—the last named would no doubt include the Board of Education, provided that the Board of Education can under the provisions of Section 1334, CLA 1933, make the necessary expenditures to pay for the necessary insurance policy thereon, which Section provides in part, as follows: "No expenditure for the following purposes shall be considered as expenditures for maintenance within the meaning of this article." Sub-section (c) of said Section precludes the taxes or insurance paid upon school property.

However, it is the opinion of this office that the Territorial Board of Education has an insurable interest in said school building, and should under the provisions of Section 1289, CLA 1933, insure the same as a rural school building since the same is not situated within an incorporated town or incorporated school district, and, consequently, no taxes are either levied, assessed or collected, for school purposes.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

Public schools and school properties within the Territory are under the control of the Territorial Board of Education, Commissioner of Education, and local School Boards.

October 12, 1936

Hon. A. E. Karnes
Commissioner of Education
Juneau, Alaska

Dear Mr. Karnes:

This is to acknowledge receipt of your letter of October 9, 1936, requesting an opinion of this office relative to the

administration of public schools and the control of public school properties in the Public School Districts of Alaska.

You will note that under the provisions of Section 1281, CLA 1933, the Territory of Alaska provided for the establishment of a uniform system of public schools to be administered and maintained in Alaska, and

Under Section 1282, CLA 1933, such public schools were defined or classified, Native schools excepted, and

The administration of public schools in Alaska is fully stated in Section 1283, CLA 1933, which provides, in part, that "The administration shall be under the Territorial Board of Education, the Territorial Commissioner of Education and local School Boards, and

Section 1284, CLA 1933, enumerates the classes of school districts created in Alaska and mentions, (1) School Districts in incorporated cities; (2) Incorporated District Schools; (3) School Districts in communities outside of incorporated cities, and incorporated School Districts which shall be known as "village" or "rural" schools, and (4) the unorganized School Districts known as "special" schools.

From a careful reading of the above statutes, we must conclude that our Public Schools are, strictly speaking, Territorial institutions, and under the direct management and administration of the Territorial Board of Education, Commissioner of Education, and local School Boards, whose jurisdiction over Public Schools and public school administration, as well as public school properties can not be questioned.

Section 1301, CLA 1933, provides that every city shall constitute a school district, and it shall be the duty of the Council to provide the same with suitable school houses, and to provide the necessary funds to maintain public schools therein, but such schools when established shall be under the supervision and control of a School Board of three (3) members, from which statute it will be noted that the city must provide the building for the school, as well as the

necessary funds to maintain the school therein. Still and yet, it has no control over either the school, or the school property.

In the case of Ketchikan vs. Strong, 6 Alaska, 114, the District Court held, as follows: "A municipal corporation in Alaska has power to establish school districts, but once the school district is established it becomes a distinct corporate entity, having its own separate board, officers and functions, and is a quasi public corporation separate from the municipality."

Hence, in the absence of a direct statute giving full and complete control of school buildings and school properties in Alaska to the Board of Education, Commissioner of Education, and School Boards, we must be governed by the general rule applicable to the construction of statutes and what was the intention of the Territorial Legislature in the enactment of the above statutes.

Therefore, it is the opinion of this office that our Public Schools, as well as school properties within the Territory of Alaska, are under the control of the Territorial Board of Education, the Commissioner of Education, and local School Boards, and any ruling made by such officials will be controlling, and, further, that duly elected School Boards in incorporated cities, as well as incorporated school districts, may, without reference to the city or the district, manage and control all school properties used in connection with the Public School established therein, but the public, including all citizens within the district intended to be benefited by the purpose to which the premises are devoted, have some rights in the school building, such as right of entry at all proper times for all proper purposes, so long as they do not interfere with the proper conduct of public schools connected therein.

Sincerely yours,

JAS. S. TRUITT,

Attorney General.

Territory can not execute lease on school lands for more than one section to any one person, association or corporation, or for a longer period than ten years.

July 8, 1936

Hon. E. W. Griffin
Secretary of Alaska, and Acting Governor
Juneau, Alaska

Dear Mr. Secretary:

Your letter of this date enclosing a letter from the Honorable Ross L. Sheely, General Manager, Alaska Rural Rehabilitation Corporation, of Palmer, Alaska, dated June 25th, addressed to the Honorable John W. Troy, Governor of Alaska, and also a copy of a proposed lease on certain Territorial school lands, received, and your request for an opinion of this office relative to the legality of said proposed lease, noted.

You are aware that the proposed lease contract embraces certain sections of Territorial public school lands described therein, that were selected by Federal authorities for occupancy by the Matanuska colonists, and by such colonists subsequently occupied, and you are further aware of the fact that the said lands were selected and occupied over the objections of the Alaska Rural Rehabilitation Corporation. However, since we come face to face with the fact that such school lands were selected and occupied as above stated, we will proceed to note for your consideration our opinion in re the proposed lease contract, which I have carefully read and considered. In the preparation of said proposed lease contract, it is evident that the lessee named therein at the time of the preparation of said lease had under consideration Sections 1411 to 1414, CLA 1933, especially said Section 1411, which provides that, "The Governor is hereby authorized to lease all lands surveyed and reserved for the support of the public schools in this Territory, as provided in Section 1 of the Act of Congress, approved March 4, 1915, (Section 353, Title 48, USC), and all leases so made

shall be in conformity with the authority granted the Territory in said Act." Therefore,

For legal authority to execute such a lease contract as the one above referred to, or any lease contract on Territorial public school lands made and entered into by the Territory of Alaska as lessor, we must refer to said Act of Congress approved March 4, 1915, Section 1, Chapter 181, 38 Stat., 1214 and 1215, which provides in part, as follows: "That the Territory may by general law provide for leasing said land, in area not to exceed one section to any one person, association, or corporation, for not longer than ten years at any one time."

Hence, you are advised that inasmuch as the proposed lease embraces far more than one section of land, to-wit, more than 1,000 acres, the Territory of Alaska cannot, by its Governor, or any other official, nor by an Act of the Territorial Legislature, enter into such lease contract as lessor, pending additional Acts of Congress so authorizing.

Since said lease contract can not be legally entered into, for reasons above stated, I shall not dwell at any length on other objectional features of said proposed contract, to-wit, renewal options, consideration, and the right to remove from said lands, on notice of relinquishment, buildings or other removable objects therefrom.

We are returning herewith Mr. Sheely's letter of June 25th, together with copy of proposed lease.

Sincerely yours,

JAS S. TRUITT,
Attorney General.

The date on which the Governor approves and signs a bill should be excluded and the whole of the ninetieth day thereafter included in computing dates on which laws are effective.

March 23, 1936

Hon. Edward W. Griffin
Secretary of Alaska
Juneau, Alaska

Dear Mr. Griffin:

The letter you presented to me from the Association of Casualty and Surety Executives, addressed to you under date of March 3, 1936, entitled—"EFFECTIVE DATES OF LAWS"—has been considered, and your personal request noted.

The writer of the letter says that: "Upon reading Section 480 of the Compiled Laws of Alaska of 1933, I was puzzled by the computation of the exact effective date of legislation which does not contain an emergency clause. * * * "

The section of the statute referred to by the writer of the letter, above stated, is a verbatim copy of Section 14, of the Act of Congress approved August 24, 1912, Chapter 387, 37 Stat. 516, Sec. 86, Title 48 USCA, the same being designated as Section 14 of the Organic Act, organizing the Territory of Alaska under the laws of the United States, the government of which shall be organized and administered as provided by said laws.

The section referred to is entitled **"Veto Power"** and provides, inter alia, "Except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the Governor. That every bill which shall have passed the legislature shall be certified by the presiding officers and Clerks of both houses, and shall thereupon be presented to the Governor, if he approves it, he shall sign it and it shall become a law at the expiration of ninety days there-

after, unless sooner given effect by a two-thirds vote of said legislature."

As a general rule, which we believe to be the correct rule, fractions of days are not recognized in law,

> San Francisco Election Com'rs. 91 Pac. 98; Scoville vs. Anderson, 63 Pac. 1013; Smith vs. Jefferson County, 13 Pac. 917; Marvin vs. Marvin, 75 N.Y. 240; Tilton vs. Sterling Coal etc. Co. 77 Pac. 758; 107 Amer. St. Rep. 689.

The effect of the rule is to render the day a sort of indivisible point, so that any act done in the compass of it is no more referable to any one than to any other portion of it; but the act and the day are coextensive and, therefore, the act can not properly be said to be passed until the day is passed. The rule is applicable to matters relating to the issuing of process, and the computation of time for the service of pleadings or process.

There have been many court decisions relative to the day, date and hour, a statute becomes a law after its passage and approval. Some of said decisions emphasize the passage of the law, others the approval of the law by the Governor, others upon the adjournment of the legislature enacting the law, and still others emphasize the publication of the law. But it is our opinion that in computing time from and after a certain day, or a given date, or the day on which the act is done, the general rule is to exclude the day of the date, unless a different method of computation is clearly intended, and in this connection there is no distinction in meaning between "date" and "day of date,"

> Sheets vs. Selden, 2 Wall. 177, 17 L. Ed. 822; Hicks vs. National Life Ins. Co., 60 Fed. 690, 9 C.C.A. 215.

When an act provides that it shall take effect and be in force from and after a named day, that day must be excluded from the operation of the act, and without continuing our research further, we conclude that in the computation of time to determine when a bill passed by the Territorial

Legislature under the provisions of the above statute (portion of the Organic Act) and approved by the Governor of Alaska becomes effective, the day on which the Governor approves and signs the bill should be excluded and the whole of the ninetieth day thereafter should be included.

Sincerely yours,

JAS. S. TRUITT.
Attorney General.

Citizenship and right of suffrage does not change or alter relationship of guardian and ward now existing between native Indians and Eskimos residing in Alaska.

April 28, 1936

Hon. E. W. Griffin
Secretary of Alaska
Juneau, Alaska

Dear Mr. Secretary:

You have requested my views on the legal status of the native Indians of Alaska, especially to their citizenship and right of suffrage.

With reference to the citizenship of the native Indians in Alaska, we refer you to the Act of Congress, approved June 2, 1924, (Chap. 233, 43 Stat. 253, Sec. 3, Title 8, USCA), which provides inter alia: "All Indians born in the territorial limits of the United States are declared to be citizens of the United States * * * ." Therefore, since Alaska is one of the territories of the United States, we have no hesitancy in saying that the Alaska native Indians are citizens of the United States.

Regarding their right of suffrage, we call your attention to an Act of Congress, approved March 3, 1927, (Chap. 363, Sec. 1, 44 Stat. 1392, Sec. 51, Title 48, USCA), entitled: "QUALIFICATIONS OF VOTERS AND ELECTORS." The

right of suffrage in Alaska, applicable to Natives of Alaska, as well as to all other United States citizens in Alaska, was, subsequent to March 3, 1927, determined by the voters ability to read and write the English language, provided that said qualification should not apply to citizens who legally voted at the General Election of November 4, 1924.

It is the opinion of this office that citizenship and the right of suffrage in nowise changes or alters the relationship of guardian and ward now existing, and has at all times existed since the Territory was ceded to the United States, between the native Indians and Eskimos residing in Alaska and the United States,

> U. S. vs. Rickert, 188 U. S. 432, 47 L. Ed. 539.

Indian tribes are the wards of the Nation,

> Lone Wolf vs. Hitchcock, 187 U. S. 567.

Citizenship is not in itself an obstacle to the exercise by Congress of its powers to enact laws for the benefit and protection of the Natives as a dependent people,

> U. S. vs. Celestine, 215 U. S. 278, 289, 54 L. Ed. 195; Tiger vs. Western Inv. Co. 221 U. S. 286 Syl, 55 L. Ed. 738; Hallowell vs. U. S. 221 U. S. 317, 323, 55 L. Ed. 750; U. S. vs. Sandoval, 231 U. S. 28 Syl. 58 L. Ed. 107; Bowling vs. U. S. 528 Syl. 58 L. Ed. 1080.

Justice Pitney, in the case of Winton vs. Amos, 255 U. S. 373, 391, 65 L. Ed. 684, uses the following language: "It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. The guardianship arises from their condition of tutelage or dependency, and it rests with Congress to determine when the relationship shall cease; the mere grant of citizenship not being sufficient to terminate it."

In the case of Demmert vs. Walstein G. Smith, Territorial Treasurer, recently tried in the Circuit Court of Ap-

peals for the Ninth Circuit, wherein said action the plaintiff sought to have Sec. 26 of Chap. 65, SLA 1929, as amended by Chap. 89, SLA 1933, declared unconstitutional on the ground that the same discriminated against the native Indians of Alaska (Opinion of the Court filed April 6, 1936), among other things, the court held: "Because of this situation, we deem it both unnecessary and improper for us to consider whether the exception from the bounty of the Territory, of those who are natural objects of the care and solicitude of the Nation, is such a discriminatory classification of the objects of the Territorial charity as would make the exception void as violative of the Fourteenth Amendment to the Constitution of the United States, or of Sections 1977, 1978, 8 USCA, Sections 41 and 42." From which we conclude that the court in the use of the above language recognized and accepted the opinion of the Secretary of the Interior, the Hon. Ray Lyman Wilbur, under date of February 24, 1932, in which opinion he recognized the native Indians and Eskimos of Alaska as wards of the Federal Government.

Sincerely yours,

JAS S. TRUITT,
Attorney General.

Insurance companies cannot be legally organized under Territorial laws.

December 31, 1935

Hon. Frank A. Boyle
Territorial Auditor
Juneau, Alaska

Dear Mr. Boyle:

Yours of December 27th, enclosing copy of Articles of Incorporation of the "ALASKA MUTUAL BENEFIT ASSOCIATION," received, and your request for an opinion of

this office relative to the right to incorporate such an organization considered.

The proposed Articles of Incorporation purport to be prepared under and in accordance with Article V, Chapter XI, CLA 1933, (Sec. 971), which section provides inter alia, "Three or more adult persons, bona fide residents of the Territory, desirous of forming a corporation for a college, seminary, church, library, or any other benevolent, fraternal, social, religious, educational, charitable or scientific association * * * shall make and subscribe written articles, etc."

By careful examination of said proposed Articles, we have failed to find wherein they comply with said statute as to its objects, unless the term, "BENEFIT," as used in said Articles, can be construed, "BENEVOLENT," as used in said statute.

If we accept sub-paragraphs (b) and (c) of said Paragraph 2 of said Articles at their face value, we must conclude the organization to be an insurance association, and if such be the real object, or objects, of such organization, they come in direct conflict with Article 11, Chapter XI, CLA 1933, (Sec. 901), which provides inter alia, "Three or more natural persons of full age may unite to form for any lawful business or purposes, except for the purpose of banking, insurance, brokerage, loan or trust, or guaranty associations * * * , a corporation, etc."

If we accept sub-paragraphs (f), (g), (h), (i), and (j) of said Paragraph 2, and Paragraph 6 of said proposed Articles as the primary objects thereof, we are forced to the conclusion that the organization is a business corporation and properly comes under the provisions of Sections 901 to 936, inclusive, of said Compiled Laws of Alaska 1933.

Article 1, of Chapter XXXI, (Sec. 1831, CLA 1933), provides for the filing of Articles of Incorporation of insurance companies, agents and brokers, in the Office of the Auditor of Alaska, but said section of our statute can

hardly be construed as authorizing the incorporation of such company under Alaska laws.

The citations referred to in your letter as having been submitted to you by Mr. Stabler have but little, if any, bearing upon the subject under consideration—they, and each of them, either directly or indirectly refer to some superior organization of which the particular company or association is an auxiliary or ancillary organization owing its legal existence to its superior.

The Articles of Incorporation submitted for our consideration are well and artistically drawn, and are certainly intended to cover a very large field of operation— a field wherein much good can be accomplished, provided such an organization can be legally perfected in Alaska under our statutes. It is patent upon the face of the Articles of Incorporation submitted that their primary purpose is to organize an insurance company, notwithstanding the fact that the organization purports to be a benevolent association and not speculative in its purposes, and, if the purpose and object of the association is the collection of assessments from living members to pay the beneficiary of a deceased member, it is an insurance company, whatever the terms of paying the consideration or the mode of paying the loss; See

> State vs. Miller, 23 N.W. 241; State vs. Bankers, etc. Mutual Benefit Ass'n., 23 Kansas, 499; Bolton vs. Bolton, 73 Maine, 299; Com. vs. Weatherbee, 105 Mass. 149; State vs. Browner, 15 Missouri, A 597; State vs. Citizens Benefit Ass'n., 6 Missouri, 163; State vs. Standard Life Ass'n. 38 Ohio, 281.

In my opinion the organization has a very large and virgin field in which to operate, and can accomplish much good if properly managed, but we cannot read anything into the Articles beyond their primary objects, to-wit, an insurance company.

I herewith return the Articles of Incorporation for your disposition thereof as you feel they should be disposed

of. We also enclose what purports to be a copy of an insurance policy in blank, issued by the "Prudence Mutual Benefit Association," which was left with me by Mr. J. C. Morris for my consideration and help in considering the subject of this letter.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

School Boards have no authority to contract teachers for any period of time beyond school year.

February 20, 1935

Prof. P. F. Ruidl
Ketchikan Public Schools
Ketchikan, Alaska

Dear Sir:

This office is in receipt of your communication of February 8th, requesting an opinion regarding the legality of contracting with instructors for duration of more than one year.

The question of contracting with instructors for terms of more than one year by School Boards of cities and of incorporated school districts has been submitted to this office on several occasions, and in each instance the question has been answered in the negative. School Boards cannot make legal contracts with teachers or superintendents beyond the term of the school year.

In Alaska the school year begins, as a general rule, in September, and ends in June of the following year. Members of the School Boards in cities and incorporated school districts are elected on the first Tuesday in April and take office on the first Monday succeeding their election. One member is elected each year for the term of three years.

Immediately after such election the Board must organize, choose its officers from the members of the Board, and proceed to make up an estimate of the money necessary for school purposes for the ensuing school year, and submit the estimate to the City Council or trustees of the incorporated school district.

Each year the School Board in a legal sense is renewed. It is, and has been for many years, a rule that a Government body cannot bind itself or its successors beyond the term of its own office in the discharge of governmental functions. The School Board is not only limited by that rule of law, but it has no authority to contract for the payment of more than the appropriation awarded or made by the City Council for the particular school year.

It has been held by the courts on numerous occasions, that School Boards may hire teachers upon binding contracts for the school year, though that year extends beyond the term of the members of the School Board. Such decisions are applicable to Alaska, for, in most instances the appropriations for the maintenance of schools extend beyond the term of the Board—in some instances as much as two months. Still, it would be impractical to terminate the teachers' contracts with the termination of the Board and enter into new contracts for the balance of such school term.

It is my opinion that a School Board has authority to bind the school district by a contract for the ensuing year, though that year extends beyond the term for which some of the members of the Board were elected, but the Board has no authority to bind the District for any period of time beyond that school year.

I have submitted the question to Mr. Karnes, Commissioner of Education, with a request that he take the matter up with the Board of Education, which is now in session here in Juneau.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

Commissioner of Education authorized to expend moneys appropriated by Chapter 34, SLA 1935, for purpose of extending relief to the City of Nome in the construction of a school building.

January 3, 1936

Mrs. Marie Drake
Ass't, Commissioner of Education
Juneau, Alaska

Dear Mrs. Drake:

Your request of yesterday for an opinion of this office in re the legal authority the Board of Education has, or may have, to use the funds appropriated under Chapter 34, Session Laws of Alaska 1935, received and considered.

In order to more fully understand the meaning of said Section 3, it becomes necessary to consider Sections 1 and 2 of said Chapter 34. The title of said Act reads, as follows: "For the relief of the City of Nome in completing and equipping the school house in said City, and making an appropriation therefor."

Section 1 of said Act appropriates the sum of $25,000, or so much thereof as may be necessary, for the purpose of extending relief to the City of Nome in completing and equipping the school house in said City. Section 2 of said Act, appropriating said sum of money, provides that the monies thus appropriated shall be expended under the direction of the Commissioner of Education.

Section 3 of said Act provides that "The monies appropriated by Section 1 of this Act shall become available for the purposes herein stated whenever the duly organized school board and City council of the said City of Nome shall, by competent evidence prove to the satisfaction of the Commissioner of Education, that the said City of Nome has expended the sum of seventy-five thousand dollars ($75,000,000) in the construction and equipping the school house in said City; it being the intention of this Act that the Territory shall pay one-fourth (¼) of the cost of the

school house and the necessary school equipment for the same, not to exceed the sum of Twenty-five Thousand Dollars ($25,000) upon the condition that the City of Nome shall pay the entire remainder."

We must conclude, after careful consideration of said Section 3, that at the time said appropriation act, including said Section 3, was enacted by the Territorial Legislature, to-wit, March 11, 1935, that the City of Nome anticipated the erection and equipping of a school building in said City costing at least $100,000, of which sum the City should pay $75,000, and the Territory the remaining sum, not exceeding, however, the sum of $25,000.

From circumstantial evidence now before me, it appears that the City of Nome cannot comply with said appropriation act in raising the aforesaid sum of $75,000, or that it can raise a sum greater than $50,000, which said sum of $50,000 is now available for said purpose, and that the duly organized School Board of said City, City Council and the Commissioner of Education, have received and now have in their possession plans, specifications and bids for the erection of a school building in the said City at a cost not exceeding the sum of $67,000. Hence, the question: Can the Commissioner of Education, under the provisions of said Section 3, use said Territorial appropriation, or any portion thereof necessary to authorize the construction of said building pursuant to the plans and specifications and bids received, as above stated, and now in possession of the aforesaid officials?

Without extending this communication to any greater length we will say that it is the opinion of this office that under the provisions of said Section 3 of said Act, the Commissioner of Education may legally draw the necessary amount of money, not exceeding the sum of $17,000, as above stated, to meet the deficiency, and we base our opinion on the intention expressed in said Section 3, to-wit: "It being the intention of this Act that the Territory shall pay one-fourth (1/4) of the cost of the school house and the necessary school equipment for the same, not to exceed the

sum of Twenty-five Thousand Dollars ($25,000.00) upon the condition that the City of Nome shall pay the entire remainder." It is certain that we have no right to deliberately misconstrue the intention expressed in the statute as to the meaning of the statute.

Sincerely yours,

JAS S. TRUITT,
Attorney General.

Rights of Municipalities to tax buildings separate and apart from real estate.

June 27, 1936

L. B. Chisholm, City Clerk
Town of Wrangell
Wrangell, Alaska

Dear Mr. Chisholm:

Your letter of June 22nd received, and your request for an opinion of this office relative to the legal rights of the City of Wrangell, a municipal corporation, to assess and collect taxes on certain property located within the corporate limits of said city, noted.

The town of Wrangell, being a duly and legally incorporated municipality under the laws of Alaska, we assume that your city ordinance relative to the levying, assessing, excepting, exempting, and the collection of said taxes, fully complies with the provisions of sub-section 9, of Section 2383, Compiled Laws of Alaska 1933, and such being the case, therefore, all property within the designated, established and defined corporate limits of said town, not exempted or excepted from taxation under the provisions of said sub-section 9, Section 2383, Compiled Laws of Alaska 1933, is subjected to taxation for school and municipal purposes not to exceed 2 per centum of the assessed valuation upon all real and personal property. I note from your letter that

the taxable property in question consists of business blocks wholly within the corporate limits of said town, constructed on lots under lease or grants from the War Department. Hence, we conclude that the title to the lands or lots upon which said business blocks are situated still remains in the Federal Government. That being the case, we come directly to the question propounded, to-wit: Can the City of Wrangell tax such property for the purposes above stated?

The legal right to tax the real property upon which said business blocks are situated, must depend upon the contract, lease, or grant, from the Federal Government to the lessees, grantees, or other assignees, constructing and/or occupying said business blocks situated thereon. If said leases or grants contain no conditional sale agreements, or other provisions whereby the title to such property may in time pass to said grantee or lessee, then we must say that the title to said lots or tracts of land remains in the Federal Government, and said real estate or lots upon which said business blocks are situated cannot be taxed. On the other hand, if said leases or grants contain provisions whereby the lessee or grantee may at some future time acquire title to said real estate, then, and in that event, said real property may be taxed as other real property in said town is taxed. However,

If the real property upon which said business blocks are situated cannot be taxed, for reasons above stated, the City of Wrangell can legally tax and should tax at their true value all of the buildings and improvements on all such real property within the incorporated limits of said town, separate and apart from the land on which the same may be situated. Improvements may be separately taxable to one other than the land owner, where such improvements were constructed pursuant to an agreement creating an ownership in the improvements separate from the fee and lease providing for ultimate purchase of a building by the lessor, or reserving the right of removal of the building by the lessee, or where the fee is subject to easements, and the structures sought to be assessed are appurtenant to such

easements and not to the fee. Improvements situated on public streets are subject to taxation,

> West Seattle vs. West Seattle Land Company, 80 Pac. 540.

The interest or estate of a tenant for years is subject to tax as such, and has been held taxable to the tenant as personalty,

> Hammond Lumber Co. vs. Los Angeles County, 285 Pac. 896.

Without continuing this to any greater length, I think that you will be able to note my conclusions, to-wit, the improvements made on the real property referred to in your letter are properly the subject of taxation, whether the same be business buildings or private wharves.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

Regulations promulgated by Board of Liquor Control intended to give to Municipalities concurrent jurisdiction in all matters pertaining to orderly conduct of business of selling intoxicating liquors.

March 4, 1936

Hon. L. B. Chisholm
City Clerk
Wrangell, Alaska

Dear Mr. Chisholm:

Your letter of the 27th ultimo, and City Ordinance No. 90 enclosed, was received in this office on the last mail, and your request for an opinion of this office re the validity of such ordinance has been considered.

CONCURRENT REGULATIONS BY STATE AND MUNICIPALITY:—By reference to Regulation 10, Liquor

Laws and Regulations of the Territory of Alaska, you will note that the regulations promulgated by the Board of Liquor Control were intended to give to municipalities concurrent jurisdiction in all matters pertaining to the barter, sale and possession of intoxicating liquors for sale within such municipalities as may be deemed necessary to the orderly conduct of the business of selling intoxicating liquor. A municipal ordinance and a state statute relating to the sale of liquors may both be operative and effective, although they cover the same ground, define the same or similar offences, or make similar regulations as to the conduct of the business if there is no irreconcilable repugnancy between them,

> Ex. p. Zany, 129 Pacific, 295; Canon City Labor Club vs. People, 121 Pac. 120.

Where the power of regulating the traffic in liquors is concurrent in the state and a municipal corporation, the grant of authority to the latter, not having been made exclusive, the same unlawful act may constitute a punishable offence both under the state statute and the municipal ordinance, and proceedings may be taken against the offender under either,

> In re Isch, 162 Pac. 1026; Deitz vs. Central, 1 Col. 323; Canon City Labor Club vs. People, 121 Pac. 120.

As a general rule municipal corporations may regulate the opening and closing hours of certain business, and within reasonable limits it may exempt from the operation of the regulation certain classes of shops. Such regulations must be reasonable and must have some tendency to promote public health, morals, safety or good order,

> 43 C.J. Sec. 409, 360; Barbier vs. Connolly, 113 U. S. 27.

In view of the holdings of the court in the case last cited, and the authority given municipalities by the Board of Liquor Control, above referred to, it is the opinion of this office that the City of Wrangell may legally prescribe

any reasonable regulations to promote the health, peace, morals, education and good order of the citizens of said city. The authority to thus regulate the traffic in intoxicating liquors within the corporate limits of said City cannot be seriously questioned, so long as the City does not attempt to entirely prohibit the same, or arbitrarily discriminate between dealers engaged in the same business. Under Congressional grants of legislative power to the Territories, it is within their power to license and regulate liquor dealers, or to enact a local option law,

> Territory vs. Connell, 16 Pac. 209; Territory vs. O'Connor, 41 N.W. 746; Rap vs. Venable, 110 Pac. 834.

No constitutional objections can be successfully urged against laws forbidding the sale of liquor on Sundays, election days, and other holidays, or restricting the sale to certain hours of the daytime, or requiring saloons to be closed during the hours of the night,

> State vs. Galloway, 84 Pac. 27; 4 LARNS, 109.

Persons licensed to sell intoxicants may be subjected to such supervision and control in the conduct of their business as will tend to preserve good order, prevent violations of the law, discourage intemperate drinking, and minimize the dangers to the community or the harm to individuals resulting from the traffic in liquors,

> Hovey vs. Thorp, 121 Pac. 303.

When a municipal corporation is invested with power to regulate or license the sale of intoxicating liquors, it has implied authority to make all such ordinances as may be necessary to make the grant of power effectual and to preserve the public peace, good order and security against dangers arising from the traffic in such liquors. It is only required that such ordinances should be within the scope of the powers granted, and not unreasonable, unjust, or unduly oppressive, or unfairly discriminating. It is clearly competent for a municipality, under such a general grant of au-

thority, such as the Liquor Board gave to municipal corporations, above referred to, to ordain that all bar rooms shall be closed on Sunday, and to prohibit under penalties, the sale of liquor on that day, and also on election days, and to require that all such places shall close their doors and cease doing business at a designated hour of the night, and to remain closed until a designated hour of the following morning,

> Portland vs. Schmidt, 6 Pac. 221; Seattle vs. Hewetson, 164 Pac. 234; Tacoma vs. Keisel, 124 Pac. 137; 40 LARNS, 757.

So long as the City of Wrangell, in the exercise of its powers, commonly called "police powers," enacts ordinances for the promotion of health, peace, morals, education and good order of its citizens, it is not within the power of the courts to interfere, molest, or give alarm; Therefore,

It is the opinion of this office that Ordinance No. 90 of the City of Wrangell cannot be successfully attacked in the courts of the Territory.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

Operators of aircraft in Territory for pleasure or non-commercial purposes should secure Federal License and file the same with the Territorial Treasurer.

April 22, 1936

Mr. Joseph M. Dunn
Fairbanks, Alaska

Dear Sir:

In your letter of April 12, 1936, you inquire whether aircrafts may lawfully be operated in the Territory for pleasure or non-commercial purposes without a Federal license.

The Federal Air Commerce Act of 1926, together with Departmental regulations thereunder promulgated from time to time, the last one we have any knowledge being of

January 1, 1934, provides that aircrafts used for commercial purposes, either in interstate traffic or within a territory of the United States, must be licensed by the Federal Government (Sec. A 4), but they also provide that aircrafts used solely for pleasure or non-commercial purposes need not be licensed (see B).

Sections 502 to 516, inclusive, Compiled Laws of Alaska 1933, provide the Territorial statutes in which you are interested. Section 502 declares that the policy, principles and practices established by the United States Air Commerce Act of 1926, and all amendments thereto, are hereby adopted and extended and made applicable mutatis mutandis to cover all traffic in this Territory so far as not covered by Federal law at any time. Therefore, if the Federal law covers the subject, the Territorial law does not apply because the Territorial Act applies only to features not covered by the Federal provisions. In other words, the Federal regulations cover all commercial flying, but we respectfully call your attention to Sections 504, 505 and 506 of the Compiled Laws of Alaska 1933, which we do not believe to be clearly embraced within the provisions of the Federal Air Commerce Act of 1926 or any of its amendments.

Therefore, it is the opinion of this office that you should secure a Federal license for your plane and file the same with the Territorial Treasurer, as provided in Section 507 of the Compiled Laws of Alaska 1933. You will note that under the provisions of Section 503, the Highway Engineer of the Territory of Alaska is authorized to make such rules and regulations as may be necessary relative to air traffic in the Territory of Alaska.

We are sending a copy of your letter directly to Mr. Hugh Brewster, U. S. Aeronautical Inspector, Anchorage, Alaska, for his consideration and request that he advise you further with regard to the above subject.

Sincerely yours,

JAS. S. TRUITT,
Attorney General.

REPORT

OF THE

Attorney General of Alaska

BIENNIUM BEGINNING
MARCH 1, 1933

BY

JAS. S. TRUITT
ATTORNEY GENERAL

Juneau, Alaska, December 31, 1934.

Hon. John W. Troy,
Governor of Alaska,
Juneau, Alaska.

Dear Sir:

Herewith I beg to transmit, through your office to the Legislature of Alaska, my report for the Biennium beginning March 1, 1933.

Respectfully,

JAS. S. TRUITT,

Attorney General of Alaska.

REPORT OF THE ATTORNEY GENERAL OF ALASKA

BIENNIUM BEGINNING MARCH 1, 1933.

General Work of the Office

The general work of the Office during the period of time covered by this Report has been such as is generally required of Attorney Generals in the Territories of the United States. Additional services of this incumbent were required by reason of membership on the Pioneer Home Building Commission, Board of Liquor Control, Law Revision Board, Board of Administration and Board of Law Examiners. Due to the fact that Congress had not given legal control of hard liquor to the Territory of Alaska, at the time of the convening of the last Legislature, the Legislative body felt that a Board of Liquor Control could handle the anticipated situation in a satisfactory manner. This procedure being a new one, thorough and impartial investigations into the matter of the sale of liquor, were necessary, for the various communities and towns throughout the Territory, required opinions and explanations regarding municipal government on the subject. In addition to numerous oral opinions rendered and of which no record has been kept, this Office has prepared approximately two hundred opinions. Many of these were rendered in instances involving the interpretation of laws passed by the last Legislature. The extent of permanent value of these opinions, interpreting statutes of a temparary nature, cannot be determined at present and it appears inadvisable to incur the additional expense of having them printed in this report. In this connection, it is announced that this Office will publish bound volume Number Four during the next biennium. Volume Three was published in 1928 and the need of Volume Four has become apparent.

Assisting the Legislature

The work in this Office began with the convening of the last Legislature and immediately upon my entrance into Office, numerous bills, memorials and amendments were drafted and outlined. Chapter 39 Session Laws of Alaska 1919, makes it the duty of this Office to communicate with Federal Officers, regarding needed legislation and in compliance with this statute, we have for consideration, the letters submitted by the Judges and Officers of the Four Judicial Divisions. Many other recommendations have been brought to attention and these with opinions and comments in brief will be submitted to the Legislature, upon request. Some of the subjects for consideration include new legislation regarding mining licenses, indigent persons, appointment of Commissioner of Health, appointment of guardians without notice, volunteer firemen, professional licenses, license plates for trolling boats, conditional sales, labor liens, service and return of process in Commissioners Courts, criminal statutes regarding indictment, bail in certain statutory offenses, additional authority for the Board of Education to enter contracts with Federal Government, etc.

Property Escheated to the Territory

Two cases have been in litigation for a considerable time. These cases involve settlement of several thousand dollars to which the Territory is entitled. These cases are set down for final hearing early in the year 1935. Many smaller estate cases have been escheated to the Territory and a few more estate cases will be investigated during the early part of the year 1935.

Suit for Taxes

From the list of delinquent license taxes filed immediately after March 1, 1933, it became apparent that many thousands of dollars were due the Territory for previous years. The Territorial Treasurer submits from time to time, lists of persons and corporations, delinquent in payment of taxes. Through the efforts of this Office by suit, settlement and demand, considerable Territorial funds have been collected. Such funds are usually remitted directly to the Territorial Treasurer and no separate record of these transactions has been kept, other than the formal demands and correspondence issued out of and answers received by this Office.

No suit for collection of license taxes, brought during the biennium has been lost. The assessment of a license tax upon the incomes of coal mines, making clear profits of over $10,000.00 annually, has been a matter of controversy for several years. The statute levying the tax, has not been attacked but the companies refused to procure licenses or furnish the Treasurer with operating statements and taxes. This Office has been successful in obtaining the operating statements for the periods in question and also the amount of license taxes due the Territory. A considerable number of investigations have been necessary in order to establish claims in which the Territory is involved, and in these instances, the value of such, resulting to the Territory, can hardly be estimated.

By Chapter 30, Session Laws of 1933, a non-resident license tax of $25.00 was imposed upon all nonresident fishermen, fishing within the waters of the Territory of Alaska. Similar statutes involving higher license taxes have been levied in times past and in all instances the statutes have been declared void by the higher courts. The present license tax was imposed with the advise of this office. Suit was brought to invalidate the license tax, by some fifteen hundred non-resident fishermen, immediately after the passage of the Act. The case was tried and won by the Territory in the District Court and when the non-resident fishermen appealed the case, the Territory was again successful in the Circuit Court of Appeals. By the validation of this license tax statute, Territorial revenues collected from non-resident fishermen for the past two years aggregated more than $137,000.00. Due to the depression existing in other lines of business, the success of this suit means much to the Territory.

Cases in Which the Territory Has Been Involved

Journal Printing Company vs. Governor of Alaska.

Territory of Alaska vs. Alaska Packers Association.

Hilding Anderson et al vs. Walstein G. Smith as Treasurer of the Territory of Alaska—District Court and Circuit Court of Appeals.

Wein Airways et al vs. Territory and Territorial and Federal officials.

Nellie Scott vs. John W. Troy, as Governor of Alaska.

Chas. Demmert vs. Walstein G. Smith, as Treasurer of the Territory of Alaska.

Several small cases were presented in the Commissioners Courts, which involved the violation of license laws.

None of the above cases have been lost and only one remains to be settled. The Wein Airway et al case is now pending in the District Court, Fourth Division. On special appearance, the Territory, Governor and Auditor, were, as defendants, dismissed, and the case is now pending on demurrer. The case was set ahead from time to time but has never come to trial. The Territory, through this Office, filed its brief and signified its willingness to stand trial on the brief, but to date no further action has been taken.

Expenses of Office

The last session of the Legislature by Chapters 120 and 125 Session Laws of 1933, appropriated funds to pay the Territorial Officers 90% of their salaries. For the months covered by this report, beginning March 1, 1933 and extending up to the present date, December 31, 1934, the expenses of this Office have been as follows:

Salary of Attorney General	$ 8,291.68
Salary of Clerk	3,482.50
Traveling Expenses	889.53
Court Costs and Briefs	752.42*
Additional Law Books	391.60
Contingent Expenses	541.62
Total	$14,349.35*

*Note. $409.92 of this amount was the assessed cost by reason of loss of case Woods Freeman vs. Territorial Treasurer, tried and decided prior to present Attorney General's entrance into office.

Memorials

The memorials passed by the Eleventh Legislature requiring the attention of this Office have received the consideration required by law. House Joint Resolution Number Six, Session Laws of 1933, regarding the securement of funds for a person alleged to have been injured while employed by the Alaska Railroad, was carefully investigated. The Alaska Railroad officials, Pioneers' Home officials, physicians and others were interrogated and copies of such correspondence were furnished Delegate Dimond as directed by the Resolution.

Board of Bar Examiners

The Attorney General was, by Chapter 111 Session Laws of 1929, directed to act as chairman of the Board of Bar Examiners. The other members of the Board are as follows:

First Division	R. E. Robertson
Second Division	Hugh O'Neill
Third Division	L. V. Ray
Fourth Division	C. D. Taylor

In order to facilitate the giving of examinations and to make it possible to give the identical examination to all applicants appearing on the date designated, in any of the four Divisions, each member of the Board was requested to submit a number of questions for use in the examinations. After the receipt of these questions, this Office prepared and compiled the questions and designated July 14, 1934, as the date for holding examinations for admission to the Bar in the Territory of Alaska. No candidates appeared in any of the other divisions. Mildred Hermann, Art Draeger and Earl Brindle presented themselves at Juneau to be examined. The written examinations covered the subjects outlined in the statute and embraced fifteen sets of questions of ten questions each. The examinations were conducted in a satisfactory manner and seven days were required for completion. The oral examinations were given July 23, 1934, before Judge Alexander, Judge of the First Division. All of the candidates made

satisfactory ratings and at the close of the oral examinations, they were admitted to practice law in the Territory. The entire cost in conducting these examinations is as set out below:

Postage, paper and supplies	$ 6.85
Watcher, 5 days @ $5.00 per day	25.00
Total	$31.85

Membership on Boards

The services of the Attorney General, by reason of his membership on the other Boards, previously referred to, do not need to be enumerated in this Report. Complete records of the proceedings of the Board meetings will be outlined in the reports furnished the Legislature.

REPORT

OF THE

Attorney General of Alaska

Biennium of March 1st, 1931
to March 1st, 1933

BY

JOHN RUSTGARD
Attorney General

Juneau, Alaska, Febraury 28, 1933.

Hon. Geo. A. Parks,
Governor of Alaska,
Juneau, Alaska.

Dear Sir:

Herewith I beg to transmit through your office, to the Legislature of Alaska, my report for the biennium ending February 28, 1933.

Respectively,

JOHN RUSTGARD,

Attorney General.

REPORT

OF THE

Attorney General of Alaska

Biennium of March 1st, 1931
to March 1st, 1933

BY

JOHN RUSTGARD
Attorney General

LITIGATION

Since the Tenth Legislature was in session this office commenced in the district court the following cases:

Territory vs. Castle, Clerk of Court, Third Division;

Territory vs. Bristol Bay Packing Company;

Territory vs. Hetta Packing Company;

Territory vs. Trinity Packing Company;

Territory, Intervener, in case of Paul Luketa et al. vs. United States-Alaska Packing Company.

The first of these cases was instituted for the purpose of recovering a number of sums erroneously sent to the Clerk of the District Court at Valdez instead of the Treasurer of the Territory. These various sums were remainders of estates of deceased persons. The case was

settled and the sums in question were transmitted to the Treasurer of the Territory.

The second of the above listed cases was instituted to recover surtax on salmon packs for several years past. It appeared that the defendant had reported to the Treasurer part of its pack as put up at Peterson Point and a part of the pack as put up at a cannery at Koggiung, when, as a matter of fact, the two canneries were at Peterson Point and situated within one hundred and fifty (150) feet of each other. Each, however, was equipped as a complete cannery and independent of the other except that the two belonged to the same company and operated under the same management. The question had arisen as to whether or not the two should be classed as one cannery plant and whether or not the products of the two canneries should be classed as one pack with the right of the Territory to collect the graduated tax on the two combined. The court held that inasmuch as each cannery was complete in itself and mechanically independent of the other, the owner had a right to report the products as two separate packs.

In the case against the Hetta Packing Company a judgment for $1,021.56 was rendered October 23, 1931 and the same was decreed a lien upon the defendant's cannery plant at Hetta Inlet on the west coast of Prince of Wales Island, as well as upon all the equipment belonging to that cannery, including two machines belonging to the Continental Can Company. On the 20th of last September the cannery and all its equipment were sold at Marshal's sale to the Continental Can Company for $500.00, which left only $360.41 to apply on the judgment after payment of cost of sale. The Attorney General made every effort to find somebody who would bid enough at the sale to enable the Territory to have the judgment satisfied, but this proved impossible. Had it not been that the Continental Can Company wished to save its own machines it is probable that the whole cannery, fully equipped, would have sold for no more than $50.00.

The case against the Trinity Packing Company was

started to foreclose a tax judgment against a boat belonging to defendant. It is pending and undisposed of.

The case of Paul Luketa et al. vs. United States-Alaska Packing Company was started to foreclose labor liens, and the Territory intervened to recover taxes. On August 8, 1931 judgment was entered in favor of the Territory for the sum of $4,366.17, which was decreed a prior and paramount lien. A judgment in favor of other lien claimants was entered in a sum of over $40,000.00. Upon this judgment execution was issued and the property sold to the lien claimants subject to the judgment of the Territory. It has been impossible to find anybody who would buy the plant were it put up for sale under the Territory's judgment.

Last December the United States Circuit Court of Appeals rendered its final decision in the case of Freeman vs. Smith, Treasurer, reported by this office to the Ninth Legislature. The case involved the validity of the law imposing a license tax of $250.00 per year on non-resident trollers. The court held the law void and enjoined the Treasurer of the Territory from endeavoring to enforce it. The court held the tax so high as to be prohibitive.

ESTATES

The number of estates of deceased persons which, since last session of the Legislature, have been dealt with in the office amounts to twenty-seven, some of which are still pending.

Your attention is especially called to the matter of the estate of Frank Lyons, deceased. The latter died at Fairbanks, Alaska, leaving a deposit in the First Dexter Horton National Bank of Seattle in amount of some $6,260.00. Mr. Lyons at the time of his death was a resident of Alaska and died intestate without heirs. The Alaska property therefore escheated to the Territory, but the authorities in the State of Washington took the position that bank deposits in that State, like any tangible property there situated, escheated to the State of Wash-

ington. In past years several deposits in banks of Washington and Oregon belonging to deceased residents of Alaska who died intestate without heirs have been confiscated by the authorities of those States. The question of the right of the Territory was so uncertain that I did not feel justified in contesting the claims of the respective States in the courts, because it seemed certain that the decisions of the lower courts would be against the Territory, but during the last two years several decisions have been rendered by the Supreme Court of the United States holding that intangible property such as bank deposits, stocks, and bonds belong in the jurisdiction in which the owner at the time of his death was a resident. While those cases pertain to the right of taxation, the reasoning has seemed to me to hold good generally, and the question of the right of the Territory in the matter of the estate of Frank Lyons is, therefore, being contested in the courts of Washington and will be appealed to the Supreme Court of that State as soon as a decision is rendered in the lower court. Messrs. Stratton & Kane of Seattle, Washington, are representing this office in the matter.

RECOMMENDATIONS FOR LEGISLATION

In addition to the amendments recommended for the purpose of eliminating conflicts appearing in connection with the compilation of the statutes, I recommend the following amendments to correct defects:

I.

Chapter 75 of the Laws of 1923 provides that no costs shall be taxed in criminal proceedings. This has generally been disregarded by the district courts as beyond the authority of the Legislature. It was considered certain that the Legislature had no jurisdiction over this subject so far as it related to costs to be taxed against defendant in prosecutions under statutes not within the jurisdiction of the Legislature, but it was thought

that it would apply to statutes over which the Legislature did have jurisdiction, such as murder, larceny, and the like. But for reasons which I shall present it is the opinion of this office that the Legislature cannot prohibit the courts from taxing costs in any criminal case, except tax cases. This statute has, therefore, left us in a position where it is difficult to prosecute for failure to pay license taxes, as the costs of the proceeding must be advanced by the Territory and generally amount to more than the license collected, even if the proceeding be successful. For instance, if a prosecution is had for failure to pay a license tax the judgment is for the amount of the license and the Territory must pay the costs, which, even in successful cases, would at times leave the Territory the loser, as the costs would be greater than the tax.

Section 2084 of the Compiled Laws of Alaska provides, inter alia, that:

> " * * in all cases of the commission or attempt to commit a felony the United States has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against him for any fine on account thereof, and for the costs and disbursements in the proceedings against him for such crime."

Section 2309 of the Compiled Laws of Alaska provides:

> "That a judgment in a criminal action, so far as it requires the payment of money, whether the same be a fine or costs and disbursements of the action, or both, in addition to the means in this chapter provided, may be enforced as a judgment in a civil action."

Inasmuch as criminal cases, aside from tax cases, are prosecuted in the name of the United States and the latter pays the expenses of all prosecutions, it is doubtful whether the Territory can deny to the United

States its rights to recover its costs. At any rate, it seems clear that the Territory in prosecutions under the tax laws should have a right to recover costs against defendant in successful cases or prosecutions must be abandoned. I therefore recommend the repeal of Chapter 75 of the Laws of 1923.

II.

Section 5 of Chapter 85 of the Laws of 1923 provides that the violation of the Road Act shall be a crime against the Territory of Alaska and not against the United States. This puts the United States Attorney in a position where he cannot prosecute under this act because he can handle only cases prosecuted in the name of the United States, and at the same time the Attorney General has no right to prosecute crimes except for violation of the tax laws. I recommend this section be amended accordingly.

In this connection I also recommend that a law be enacted to punish hit-and-run drivers. This may be done by an additional section added to Chapter 85 of the Laws of 1923.

III.

Chapter 40 of the Laws of 1929, providing for the summary administration of small estates, provides, in Section 2, that the Commissioner may, under that chapter, administer estates of persons who died intestate within his precinct and leaving an estate therein. The act should be amended as to authorize the Commissioner to administer under this law small estates left by intestate decedents in the precinct even if the death took place outside the precinct. It has happened that parties have left the Territory and died in the States leaving small estates in some precinct in the Territory, and the Commissioner should be given authority to administer such small estates summarily as otherwise provided in said chapter.

IV.

Section 8 of Chapter 39 of the Laws of 1929 imposes a tax of ten dollars ($10.00) per year on dentists. The law provides that this tax must be paid before the first day of July each year, and that in case of default a certificate of registration may be revoked by the Board upon ninety (90) days notice from the Secretary of the Board. This provision has proved unsatisfactory as the Board meets only once a year and it is often difficult to give the ninety days notice required, and the language leaves it doubtful as to whether or not the notice must be given after the Board has ordered the cancellation. I suggest that the section be so amended as to impose a penalty upon delinquency, and that if the tax, with penalty, is not paid after reasonable notice from the Secretary of the Board, the Board shall have authority to cancel the certificate of registration. Since the Board as a rule meets in the middle of the summer, I suggest that the tax be declared delinquent on the first day of May instead of on the first day of July each year.

V.

Chapter 59 of the Laws of 1931 provides for bonds in certain cases to be filed by "salmon canneries, fish salteries, or works or plants for manufacturing oil, fertilizers or fish meal" to insure the payment of their taxes. This should be so amended as to include fish buyers as well.

In this connection attention is called to the last paragraph of Section 2 of Chapter 31 of the Laws of 1921 as amended. It is there provided that the applicant for provisional license may carry on the business from the date the application was actually made. In order to make Chapter 59 of the Laws of 1931 operative and effective it is necessary to abrogate the last sentence of Section 2 of the Act of 1921 as amended.

VI.

Section 15 of Chapter 53 of the Laws of 1923, which

gives a lien to fishermen and cannery workers on the products of fish canneries, provides that:

> "Any person who shall remove or cause to be removed from the Territory of Alaska any fish, fish products or the products of any aquatic animal, or any fishing appliances, upon which there shall be a lien or right of lien under the provisions of this Act, unless a bond as provided in the foregoing section has been duly approved, shall be guilty of a misdemeanor, etc."

It has been held that this provision did not apply to transportation companies acting as common carriers. I would suggest that amendments to Sections 13 and 15 of this Act be made so as to make transportation companies both civilly and criminally liable for carrying away from the Territory products of the fishing industries of the Territory on which there may be a lien unless the bond provided for by Section 14 has been filed. This suggested amendment has been embodied in the bill for codification of the lien laws submitted herewith.

VII.

Frequently lien claimants or other creditors against industrial establishments in the Territory have offered to pay the delinquent taxes on such establishment provided the person paying such taxes could take an assignment of the tax lien with all the priorities which go therewith. I suggest that the tax law be so amended as to authorize the Territorial Treasurer to assign taxes and tax liens to any purchasers of the same for the full value due or for such value as the Treasurer, Governor, and Auditor may think wise to accept.

VIII.

Chapter 83 of the Laws of 1931 provides for a system of licensing automobiles. Section 8 of that Act provides for a fine of one hundred dollars ($100.00) for operating a motor vehicle without a license, but no provision is made

for enforcing the payment of the judgment by imprisonment. Moreover, the section does not specify who is entitled to the fine. The section should be so amended as to provide that where the fine is not paid the court may impose punishment by way of imprisonment and that the fine, when paid, should be transmitted to the Territorial Treasurer.

IX.

Chapter 20 of the Laws of 1919 provides for proceedings to enjoin and abate houses of lewdness, assignation and prostitution. It is further provided that such proceedings shall be commenced and carried on by the United States Attorney in the name of the Territory. Under the circumstances the question has arisen as to who should be liable for the expenses incurred. Inasmuch as the proceeding is carried on in the name of the Territory it seems reasonable that the Territory should pay the court expenses such as clerk's fees and marshal's fees, but at the same time it will be observed that no officer of the Territory has any right to act for the Territory in the matter or to decide whether or not it is a proper case for prosecution. I would suggest that the Act be amended so as to require the proceedings to be instituted in the name of the United States. That would absolve the Territory from any responsibility in the matter.

X.

Chapter 11 of the Laws of 1921 provides for calling for popular vote for choice of Governor. This provision has become absolutely disregarded. The chapter is, therefore, not incorporated in the new compilation of the statutes and I recommend its repeal.

XI.

I further recommend that anybody who removes from the Territory any property on which the Territory has a lien for taxes shall be liable for such taxes and in addition shall be guilty of larceny.

COMPILATION OF THE STATUTES

By Chapter 50 of the Laws of 1931 the Attorney General was directed to cause the statutes of the Territory to be compiled and annotated either by entering into contract with somebody to do the work or by employing persons to do the work and pay according to the work done. The sum of $12,000.00 was appropriated for this expense.

It was found impractical to secure anybody to do the entire work at a fixed price. The Attorney General, therefore, undertook to do the work himself with the aid of persons from time to time hired at fixed monthly salaries. The greater part of the time of the Attorney General and his clerk has been devoted to this task, and nearly all the anotations, as well as much of the compilation, have been done by him and his clerk. The work has now been completed with the exception of some checking of the indexes, which should be finished by the time the Legislature convenes.

At the end of each chapter and title several section numbers have been skipped in conformity with modern methods of compilation. This will allow the section numbers at present adopted to be maintained in future compilations and afford opportunity to insert the laws passed at the eleventh session without disarranging the present numbering of sections. This is of importance and I recommend the system be adhered to.

Several conflicts and other defects have been found and to cure these thirty-three bills for amendments and repeals have been drafted and are herewith submitted. The compilation has been made on the assumption that these amendments and repeals will be made as drafted.

It will be a small matter to insert the statutes adopted by the eleventh session and this office should be able to accomplish the task inside of two weeks after the session adjourns.

The new compilation will contain not over 2400 pages 8¼ inches long by 4¾ inches wide, of reading matter,

and should be bound in two volumes. The cost of printing and binding five hundred copies will be about $2.90 per page or less than $7,000.00.

It is recommended that bids for printing and binding be called for from several firms specializing in printing statutes, such as the Filmer Brothers Electrotype Company of San Francisco and the Bobbs-Merrill Company of Indianapolis, and that the printer be given the right to market the new statutes for his own benefit at a price to be fixed by the Legislature, after delivering fifty copies to the Territory for the use of the Legislature and the Territorial offices. If this be done it is probable the publication will cost the Territory less than $4,000.00.

In calling for bids blank forms for bids should be submitted to insure that all bids are on the same basis so no question could be raised as to who is the low bidder.

The calls for bid should specify the grade of paper, style of binding, style of type used for the different kinds of reading matter, size of pages, et cetera.

It is also recommended that the new statutes be bound in two volumes, that the text be printed in single column and that the notes of decisions be printed in double column.

In preparing the compilation and making the annotations this office has expended the sum of $11,236.72 from the appropriation made for that purpose.

INCOME TAX

By Chapter 34 of the Laws of 1931, the Attorney General was required to investigate the feasibility of levying an annual income tax, and to gather data with reference thereto.

In obedience to this law I have secured copies of the income tax laws and regulations of the various States having such system of taxation, but I have found it impossible to ascertain the probable amount of income which could be subject to such tax.

It should be noted, however, that such tax can be collected from residents of the Territory only and even then cannot lawfully be levied upon salaries received by Federal officers or employees. As this would seem to eliminate the majority of those sought to be reached by the tax it is not believed that the revenues collectable in this manner could be sufficient to justify the establishment of the machinery necessary to enforce such system of taxation. If the Legislature should decide to levy income taxes on residents of the Territory and should indicate the amounts and limitations of such tax, it will be no lengthy task for this office to draft the bill for such purpose.

EXPENSE OF OFFICE

The expenses of the Attorney General's office from March 1st, 1931 to March 1st, 1933, have been as follows:

Salary of Attorney General	$10,000.00
Salary of Stenographer	4,025.00
Traveling Expenses	579.00
Court Costs	505.47
Contingent Expenses	533.09
Additional Law Books	376.40
Total	$16,015.46

LEGAL OPINIONS

Of the legal opinions rendered by this office the following are deemed of sufficient interest to the Legislature to justify submitting them herewith.

1. Indebtedness in excess of revenues for the calendar year is void and warrants for same should not be drawn by Auditor.

2. An appropriation is not an indebtedness unless it is in payment of some obligation theretofore or thereby assumed.

3. In event the funds on hand in the treasury are insufficient to pay all lawful demands at any given time,

such claims must be paid in the order in which they are created as soon as available money comes to the treasury.

4 Duties of Auditor defined.

June 6, 1931.

Hon. Cash Cole,
Auditor of Alaska,
Juneau, Alaska.

Dear Sir:

Your communication of 19th ultimo reached this office just as the writer was starting for a trip to the Interior of Alaska. Hence this delay in answering.

You state that the recent Legislature appropriated more money for the present biennium than the Territorial revenues and the cash on hand in the Territorial Treasury will amount to, and that it seems probable that all claims cannot be paid in event all expenditures authorized be incurred. For that reason you are submitting the following questions:

> "First, are there prior claims, and if so, what are they? And, under the existing law, would it be the duty of the Auditor to refuse to sign warrants, if, in his judgment, there only be a sufficient amount in the treasury to meet the total of the most important of the prior claims?
>
> "Second, are the total moneys in the treasury measured by the calendar years corresponding to the appropriation expenditures, such as 1931-32? While the appropriations are controlled by the biennial year, April 1st to March 31, the revenue bill provides that the collections are by the calendar year, January 1st to December 31st.
>
> "Should any moneys that are collected for the biennium following 1931-1932 be available for expenditure for 1931-32 appropriation?"

The Organic Act of the Territory provides that neither the Territory nor any municipal corporation thereof shall have any authority, "to create, nor to assume, any indebtedness, except for actual running expenses thereof; and no such indebtedness for actual running expenses shall be created or assumed in excess of the actual income of the Territory or municipality for that year." And "all authorized indebtedness shall be paid in the order of its creation."

By the word "indebtedness" as used in the above quotation is meant "liabilities to pay money voluntarily contracted."

Nor can it be doubted that the word "year" used in the quotation from the Organic Act refers to calendar year. If there were, that doubt is dissipated by Section 25, Chapter 118 of the Laws of 1932 where it is provided that the fiscal year of the Territory shall concur with the calendar year.

An appropriation is not necessarily indebtedness unless it is in payment of some obligation theretofore or thereby assumed. An appropriation may be only an authorization for certain officials of the Territory to incur an indebtedness on behalf of the Territory. Fixing salaries for officers and employees creates an indebtedness. So does an offer to cities and school districts to maintain or contribute to the maintenance of schools. But an appropriation authorizing the Territorial Board of Road Commissioners, for instance, to expend a limited sum for building roads, etc., is not an indebtedness until the Board has entered into contract for the expenditures of such funds. The same would hold good of several other appropriations made by the Legislature where no contractual relations were created by or exist at the time the appropriation was made.

Under the limitations of the Organic Act above quoted the indebtedness or liabilities for any calendar year cannot lawfully exceed the revenues for that year including the moneys carried over from the previous year. Any contract made by any officer or department of the

Territory to pay any sum in excess of such amount is illegal and void.

In event the funds on hand in the treasury are insufficient to pay all lawful demands at any given time, such claims must, under the provisions of the Organic Act above quoted, be paid in the order in which they were created as soon as available money comes to the treasury.

If the Auditor finds that the revenues for any calendar year are insufficient to meet the appropriations made by the Legislature it becomes his duty to determine first, by the priorities of the claims and second, whether any claims exceeds the statutory limitation above referred to. In other words, it becomes the duty of the Auditor to determine whether any particular claims constitute an "indebtedness," because if it be in excess of the revenues for the year it is not an indebtedness, and no warrant should be drawn for its payment.

Much litigation has arisen over kindred questions throughout the country under either statutory or constitutional limitations placed upon municipalities to incur indebtedness, and while the authorities are very conflicting the courts have shown a liberality in sustaining claims necessary to maintain the government and to discharge its governmental duties.

The Supreme Court of Washington in Rauch vs. Chapman, 48 Pac. 253, and subsequent cases has held that warrants issued for "necessary" expenses in the discharge of the police power of the municipality, maintenance of school, officers' salaries etc., would be legal though they were in excess of the limitations established for incurring indebtedness. The court so held on the theory that a municipality had certain duties to perform and that it could not be relieved of such duties simply because the expenses were in excess of the limitations in question. The Territory is in a sense a municipality under the Federal Government, and its powers import a duty, for which reason the argument of the Supreme Court of Washington may apply to the Organic Act of Alaska and its limitations. But it may be stated that

the Supreme Court of Washington has gone somewhat farther in sustaining debts incurred in excess of constitutional limitations than any court in the country. However, this office takes the position that inasmuch as it is imperative that the functions of the Territorial Government be discharged it is reasonably certain that the courts will hold that liabilities contracted for that purpose will constitute prior claims against available assets in the treasury of the Territory.

In the case of Dickenson vs. Petersburg, 6 Alaska 488, the District Court of the First Division of Alaska, Honorable Thomas Reed presiding, held:

> "If it (indebtedness) be within the income and revenues, it would be valid, although other contracts, subsequently made, create an indebtedness in excess of the revenue, and these revenues be applied to payment of the later invalid indebtedness. Such payments, in contemplation of law, are made upon void debts, and cannot be used to defeat liabilities and obligations which are within the income when those obligations were entered into. It is clear, too, that the revenue and income of each year can be used for no other purpose than legitimate claims for that year, until they, one and all, have been paid, and any excess of revenue may be carried over unto the next year, but until all the valid demands against the revenue of the year in which they are incurred have been paid, the integrity of the fund cannot be impaired."

It is the view of this office that the above quotation from the opinion of Judge Reed correctly states the law. It is obviously impossible to state an abstract legal proposition than can form a clear guide for your office in all individual cases presented, but the foregoing will probably suffice for the time being. Each claim so frequently

presents peculiar features of its own which may or may not take it out of the general rule.

Respectfully submitted,
JOHN RUSTGARD,
Attorney General.

---

1. Surplus in treasury at end of year is treated as revenue for next year.

2. When appropriations may be paid.

June 12, 1931.

Honorable Cash Cole,
Auditor of Alaska,
Juneau, Alaska.

Dear Sir:

In answering yours of the 11th. inst., I can only repeat in substance what I said in mine of the 6th. inst.

Any surplus in the treasury of the Territory on December 31st., is treated as part of the income of the treasury for the next calendar year.

Unless the act making the appropriation, or some other statute governing the appropriation, specify how and when it is to be paid, it may be paid all in one year or spread over two. Appropriations for salaries can be paid only as earned, at the rate established by statute. Similar limitations are placed upon other appropriations. But where an appropriation is made for a specific purpose without limitations as to time of the expenditure of the same, it is available during any calendar year when funds are available—not, however, after the appropriation has expired.

Yours truly,
JOHN RUSTGARD,
Attorney General.

Where it is questionable whether there will be surplus in treasury to carry over to next year, it becomes duty of Territorial officers to apportion expenses for governmental functions so no more is paid than is earned during the year.

October 1, 1931.

Honorable Geo. A. Parks,
Governor of Alaska,
Juneau, Alaska.

Dear Sir:

The Auditor has drawn warrants on the Treasury of the Territory in favor of the rural school districts amounting in all to the sum of $57,000.00, more or less. These warrants are drawn to cover operating expenses of rural schools for the **second half** of the school year 1931-32, which is concurrent with the first half of the calendar year 1932. These warrants are dated September 30, 1931 and made chargeable to the current school appropriation for the period ending March 31, 1933.

The question has been submitted to this office as to whether the sums for which these warrants are drawn are chargeable to the income of the Territory for 1931 or for 1932?

Heretofore it has been customary to issue warrants at the beginning of the school year for the expenses of the entire school yar. Where there is a certainty of a surplus in the Treasury such system is unobjectionable because the surplus is carried over as part of the income for the next calendar year. But at the present time there is little probability of any surplus. Under the circumstances, nothing should be drawn against this year's resources which is not properly chargeable thereto.

The Organic Act provides that the Territory shall have no power "to create nor to assume, any indebtedness, except for actual running expenses thereof; and no such indebtedness for actual running expenses shall be created or assumed in excess of the actual income of the Territory—for that year."

It seems reasonably clear that the expenses of running the schools next year can not be said to be a part of the "actual running expenses" of the Territory for this year. If this be correct, such expense cannot be charged to the "income of the Territory" for this year.

It is the view of this office, that whenever there is any question as to whether there will be a surplus to carry over to the next year, it becomes the duty of the proper officers of the Territory to apportion the expenses of the governmental functions of their respective departments so that no more be paid during any calendar year than is earned by the payee or claimant during that year.

In this particular case it is suggested that the warrants in question, which have not been countersigned by the Treasurer, be recalled and cancelled. To hold them until the first of next year will not serve the purpose, for the law provides they must be paid in the order in which they were issued. To pass them through with the present dating and numbering might place the Treasurer in position where he would have to pay them out of this year's "income," and at the same time place the Auditor in a position where he would have to refuse drawing warrants for claims legitimately chargeable to the revenues for this year and to none other, on the theory that this year's income has been exhausted.

Respectfully submitted,

JOHN RUSTGARD,
Attorney General.

1. Legal opinions of Attorney General only advisory and Auditor does not have to follow them.

2. If Auditor illegally checks out funds from the treasury he becomes liable in damages to any one injured thereby.

October 5, 1931.

Honorable Cash Cole,
Territorial Auditor,
Juneau, Alaska.

Dear Sir:

This office is in receipt of yours of 2nd. inst., informing me that you take exception to the opinion of this office rendered to the Governor under date of October 1st, and that you do not intend to abide by the same.

Any opinion on legal problems rendered by this office to officers of the Territory is, of course, only advisory and not binding. Who is right and who is wrong may ultimately have to be settled by the courts. But inasmuch as the course which you announce your intention to pursue may be of very great importance, both to your office and to the public, I shall take the liberty of elaborating more fully upon the position taken by this office.

It is to be observed from your communication that you think you have found a conflict between certain Territorial statutes and the Organic Act, and that it is your intention in such cases to ignore the latter and abide by the former. The opinion of this office, to which you take exception, was based upon the requirements of the Organic Act. If there be any conflict between the latter and any local legislative enactment, this office would hold that the statutory enactment would be void to the extent of the conflict. But unless such conflict be clear and unavoidable the legislative enactments will be construed in harmony with the provisions of the Organic Act, if that be possible from the language employed.

Your proposition is now to pay out of this year's resources of the Territory the salaries for school teachers to be earned by them next year. For the reasons

stated in my recent communication to the Governor, I do not believe this can legally be done where there is no surplus likely to be carried over to next year. If I should happen to be correct in this position it is easy to see what may be the result. Many parties to whom the Territory becomes indebted for money earned or expenses incurred this year may have their claims disallowed by the Auditor on the theory that the funds are exhausted before the claims are presented. In fact, if the funds have already been checked out by the Auditor it would be his duty to refuse to draw warrants for such claims, and if, notwithstanding, the Auditor issues the warrant the Treasurer cannot pay it because the funds have been exhausted in paying prior warrants issued by the Auditor's office.

The claimant would then naturally answer that the funds were exhausted because the Auditor had illegally issued warrants against this year's resources in payment of services to be rendered next year. Inasmuch as claims for services rendered this year cannot legally be paid out of next year's income, it would seem very probable that you would personally be liable for such claims—and why not? If the treasury for this year be depleted because your office has checked out funds illegally, you and your bondsmen would have to make good to those who suffer by reason of such illegal acts on your part.

This might not be any very serious inconvenience to the public were your bonds sufficient to cover what I consider an illegal depletion. But your bonds are only in the sum of $25,000.00, and if you adhere to the policy outlined in yours of 2nd. inst. the illegal depletion may amount to a great deal more.

It is for this reason that the matter may become of considerable importance to the public, and for that reason should enlist the interest of the other officers of the Territory.

The writer realizes as much as anybody the uncertainty of the law and that it is not always an easy matter

to prognosticate what the courts may do in a particular case. It is for this very reason that it is generally conceived to be the proper function of the counsellor-at-law to advise his client to follow that course which is most likely to save him from disagreeable complications. It is difficult to see how adherence to the advice I have given in this matter could lead to unpleasant consequences for anybody. But it seems fairly certain that the course you have determined upon will entail trouble for many, even if ultimately you should be found to be correct in your assumption.

It remains to be stated that I have been become aware of no reason for apologizing for the language employed in mine of July 14 this year, quoted by you. What has transpired since that letter was written has confirmed the wisdom of the position I then took. You submitted to me a list of appropriations and requested me to state the order in which they would be entitled to precedence in event of insufficient funds. The question could not be answered in that form because the precedence at issue depends primarily upon the time when a claim is earned or expense incurred. The law was so stated in my communication to your office under date of June 6th this year.

At the present time the concrete question has been submitted to this office as to whether claims for expenses to be incurred next year take precedence over claims for expenses incurred this year as charges against the income for this year, and this I have answered in the negative in full consonance with my former opinions rendered your office.

Respectfully submitted,
JOHN RUSTGARD,
Attorney General.

Duty of Treasurer of Territory to countersign warrants drawn by Auditor, unless he knows warrant is drawn fraudulently, but if warrant is drawn for a smaller sum than is due the Treasurer must still countersign it.

November 30, 1931.

Honorable W. G. Smith,
Treasurer of Alaska,
Juneau, Alaska.

Dear Sir:

This office has advised you at various times that the Treasurer's function in countersigning warrants drawn by the Auditor upon the Territorial Treasury was, in the opinion of this office purely ministerial, and as such your duty whenever such warrant was presented to you for such signature.

However, what has recently occurred has brought this office to the realization that there may be exceptions to this general rule, and to obviate the possibility of misunderstanding or further complications, I take this opportunity to define the position of this office more explicitly.

If, for instance, the Auditor should issue a warrant fraudulently for a claim which he knows is not due or owing, and your office should have actual knowledge of the fraud, you would under such circumstances be an accessory to the crime if you knowingly helped to effectuate the fraud by countersigning such warrant. But if the warrant is for a lesser amount due claimant, though the withholding of the full amount due be a criminal act, it would still be your duty to countersign the warrant, for the reason that the withholding of the full amount, would, under such circumstances, be a more aggravated offense than withholding only a part.

This problem has presented itself in connection with the issuance of warrants to Bert Johnson for only part of the amounts awarded him by the Board of Examiners on appeal. While it seems clear that the Auditor is guilty of criminal malfeasance in office in refusing to abide by the decision of the Board of Examiners, your

countersigning these warrants cannot be classed as aiding or abetting the Auditor's offense, because your action would help to give claimant at least a part of what he is entitled to, while your refusal to sign would have the effect of depriving him of the entire amount due him.

Under the circumstances this office would advise you to countersign the warrants in question.

Yours very truly,

JOHN RUSTGARD,
Attorney General.

Indians on Annette Island are liable to school tax.

June 17, 1931.

Honorable W. G. Smith,
Treasurer of Alaska,
Juneau, Alaska,

Dear Sir:

The question whether the Indians residing on Annette Island are subject to the school tax has been submitted to this office.

The answer should be in the affirmative.

It may be admitted that the majority of the Indians in the Territory are treated as wards of the Government of the United States to the extent that the Government is making special efforts to teach them civilized ways and to educate them to properly discharge their prerogatives as citizens of the country. But this does not mean that they are exempt from taxation. As citizens of the United States they are not only endowed with the privileges but also charged with the duties devolving on citizenship. But this is not determinative of the question. No person's duty to pay taxes is dependent upon citizenship. Any person residing in or owning property within the Territory is subject to taxation.

Some of the Indians on Annette Island are citizens and some are not, but they are all under the jurisdiction of the Territory and always have been. The fact that a person lives on land belonging to the United States does not exempt him from Territorial taxes, or otherwise remove him from the jurisdiction of the Territory.

The great majority of the residents of Annette Island earn their living at work outside the confines of that reservation, and they have the privilege to go and come at pleasure. On the Island they have a voting precinct and have the same representation in the Legislature as those who live in other parts of the Territory.

In the case of Territory, vs. Annette Island Packing Company, (289 Fed. 671) the United States Circuit Court of Appeals held that the cannery on the Island was not subject to the excise tax on salmon canning. This ruling was based on the ground that the cannery was the property of the United States leased to the defendant company and was an instrumentality of the United States for the purpose of educating the Indians. Under the well known rule that an instrumentality of the Government is not subject to taxation it was held that the Legislature had no authority to levy an excise tax on this particular cannery, or the lessee thereof, any more than a tax could be levied on a governmental school.

But there is nothing in that case to justify the contention that the Indians residing on the Island are not subject to other taxes or regulations imposed by the Legislature of the Territory.

It is the conclusion of this office that residents of Annette Island are subject to the school tax, whether they make their living on or off the island.

Respectfully submitted,

JOHN RUSTGARD,
Attorney General.

The State of Washington cannot lawfully levy a succession tax on intangibles, such as bank deposits and bonds, belonging to decedent residents of Alaska.

Jan. 14, 1932.

W. G. Smith, Esq.,
Territorial Treasurer,
Juneau, Alaska.

Dear Sir:

You have submitted to this office the communication of Anthony J. Dimond, in reference to the estate of James Hagan, deceased, transmitting inheritance or succession tax of the estate.

Mr. Dimond, in his communication, makes the following explanation:

"You will note that no tax has been computed or paid upon the next estate of decedent of $1,553.58 situated in the State of Washington and administered upon there under the laws of that State. I assume that under these circumstances no inheritance tax is due to the Territory of Alaska on the portion of the decedent's estate so situated in the State of Washington and administered upon there. However, if a different view is entertained by your office, I trust that you will advise me promptly so that it may be determined and adjusted before distribution of the decedent's estate."

What this personal property administered upon in Washington consists of is not stated, but it is presumed that it consisted of bank credits and bonds.

The attention of this office has frequently been called to the fact that the State of Washington has persistently collected succession taxes on deposits in Washington banks left by decedent residents of Alaska, and where such decedent residents of Alaska died intestate and without heirs all deposits of such decedent in banks of the State of Washington have been confiscated by the State as escheated property. This office has not been able to see the justification for such an attitude on the part of the authorities of the State of Washington.

Inasmuch as this subject frequently comes before your office, as well as before the office of the Attorney General, it is deemed expedient at this time to discuss the matter a little more at length than has been my custom heretofore.

The law seems at this time well settled by the Supreme Court of the United States that **tangible** property may be taxed only in the State where it is located and has acquired a situs, while **intangible** property can be taxed only in the State of decedent's residence.

It is a general rule of law that the personal property of a person at the time of his death follows the law of his domicile,—5 R.C.L. 927, Sec. 23; 11 R.C.L. 445, Sec. 548; 11 R.C.L. 441, Sec. 542.

In 12 Corpus Juris, 470, Section 64, the rule is stated as follows:

"By a fiction of law, movables or personal property are deemed attached to the person of the owner, and so, present at his domicile, wherever their actual location may be."

This rule has been adhered to by the State of Washington—Rader v. Stubblefield, 73 Washington 334, but this rule, for the purpose of taxation, was somewhat modified by the Supreme Court in Frick v. Penna., 268 U.S. 473. It was there held that the tax statute of decedent's domicile did not reach the tangible personal property outside of that State, but the intangible personal property, such as bonds and mortgages, was taxable in the State of the decedent's domicile. Subsequently, and in The Farmers Loan & Trust Company v. Minnesota, 280 U.S. 204, the Supreme Court of the United States held that intangible personal property was taxable only in the State of decedent's domicile and was not taxable in any other State. In that case the court said, inter alia:

"While debts have no actual territorial situs we have ruled that a State may properly apply the rule mobilia sequunter personam and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with

permanent situs therein and their testamentary transfer, may be taxed only by the State where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two States apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction."

The Court quotes with approval from its decision in The State Tax on Foreign Held Bonds, 15 Wall. 300, the following:

"But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations belong to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities and no form of expression could add anything to its obvious truth, which is recognized upon its simple statement."

In Baldwin v. Missouri, 281 U.S. 586, the Supreme Court dealt with the question where decedent was a resident of Illinois and at the time of his death owned credits for cash deposited in banks located in Missouri, coupon bonds of the United States and promissory notes, all physically within that State, and some of the notes had been executed by citizens of Missouri and were secured on lands in the State. It was held that the credits, bonds, and notes were not within the jurisdiction of Missouri for taxation purposes and that to enforce the Missouri transfer or inheritance tax reckoned upon their value would violate the Due Process Clause of the Fourteenth Amendment to the Constitution. The Court there said:

"The bonds and notes, although physically within Missouri, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living, and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power."

And with reference to the bank deposits:

"We find nothing to exempt the effort to tax the transfer of the deposits in the Missouri banks from the principle applied in Farmers Loan & Trust Co. v. Minnesota. So far as disclosed by the record, the situs of the credit was in Illinois, where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere."

As a basis for this view the Court has referred to bank deposits as mere credits in the following language:

"Ordinarily, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes, whether secured by liens on real estate or otherwise."

The most recent decision of the Supreme Court on this subject is Beidler v. South Carolina Tax Commission, 282 U.S. 1, where the court finally disposed of this question in the following language:

* * * "it is now established that the mere fact that the debtor is domiciled within the State does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt by a decedent who is domiciled in another State. The transfer is taxable by the State of the domicile of the deceased owner. Open accounts, including credits for cash deposited in bank, fall within this principle, and its application is not defeated by the mere presence of bonds or notes, or other evidences

of debt, within a State other than that of the domicile of the owner."

See last case: First Nat. Bank of Boston vs. Maine, 284 U.S. 312.

This forecloses further discussion of the subject.

From the order approving the final report and account of executor and decree of distribution in the estate of James Hagen, deceased, it appears:

"That the said James Hagen died testate at Seattle, Washington, on June 19th, 1930. That at the time of his death said decedent was, and for a long time prior thereto he had been a resident and inhabitant of the Anchorage Precinct, Third Division, Territory of Alaska."

The fact that Hagen happened to be in Seattle at the time of his death does in no manner affect the rule above laid down, nor does the fact that the State of Washington collected a tax deprive the Territory of Alaska of the right to collect the tax which the latter lawfully levied.

The foregoing is in accord with what I wrote your office on February 4th, 1931, relative to the estate of George Skidoff, and on October 28th, 1930, to Messrs. Lyons & Orton, relative to the estate of Sam Magids, deceased.

Your attention is also called to the fact that interest on the tax is due the Territory, pursuant to the provisions of Section 13, Chapter 60, of the Laws of 1919.

Yours very truly,

JOHN RUSTGARD,
Attorney General.

The Legislature has authority to appropriate funds for payment of the expenses of the Governor's office in discharging duties imposed by the Legislature, provided such duties are germain to the functions of his office as Governor.

May 17, 1929.

Hon. Cash Cole,
Auditor of Alaska,
Juneau, Alaska.

My dear Mr. Cole:

By yours of 13th instant you have transmitted to this office a communication from Judge Wickersham wherein he protests against the payment out of Territorial funds the following items appropriated for the Governor's office by Chapter 120 of the Act of 1929, to-wit:

Additional salary of the Secretary to the Governor, $720.00 per annum $1440.00

One clerk, at $2100.00 per annum 4200.00

One stenographer, at $1800.00 per annum 3600.00

You request the opinion of this office "from a point of law, just how these specific cases should be treated" by your office.

I shall endeavor to deal with these protests.

I.

Appropriation for the Governor's Office.

Judge Wickersham asserts that the three items appropriated for the Governor's office and above referred to are illegal, but he does not state wherein he claims the illegality consists.

The Appropriation Act of 1929, so far as these items are concerned, is identical with the Act of 1927. Immediately after that act was passed and approved Judge Wickersham instituted proceeding in the district court against the Treasurer of the Territory to enjoin him from paying

the appropriation made for the Governor's office, the Secretary's office and various other appropriations, including those here in question. As to some of the items the plaintiff was sustained by the district court, but the items here in question were by the court held legal and valid. The suit was then dismissed and a new proceeding started solely for the purpose of enjoining the payment of the appropriations for the Governor's office. A demurrer to this complaint was overruled and an answer filed to which plaintiff demurred. This last demurrer was never acted upon by the court and the suit was dismissed after the appropriations involved had been disbursed.

The principal objections raised by plaintiffs in those cases to the appropriations here in question were two,—(1) that the Governor is a Federal official discharging Federal functions and the Legislature cannot lawfully appropriate funds to operate a Federal office, and (2) that there is no law providing for salaries for the Governor's clerks and appropriation for these is therefore improperly included in the general Appropriation Act.

It is to be assumed that these were the objections in Judge Wickersham's mind when he made his protest to you that the appropriations here in question were illegal and should not be paid.

The objections are certainly serious and a decision of the questions involved are of such far reaching consequences that they are entitled to the most careful and deliberate consideration.

The legal problems involved received a most careful study by His Honor Judge T. M. Reed in the first of the Wickersham cases, and this learned jurist, after discussing at length and eruditely each proposition advanced, reached the conclusion that the appropriations here in question were legitimate though others were not found to be so.

While I have not been able to follow Judge Reed in all his reasoning on all the propositions involved in that

case, it would not seem justifiable by this office in a case of this character at this time to hold that he is so clearly in error that this office cannot accept the decisions as authoritative. The questions involved have been argued pro and con during a period of several years and have agitated the public during several pre-election campaigns. The recent Legislature evidently accepted Judge Reed's ruling as legally correct, and unless it appeared clearly that the legislative branch of our government were in error in doing so it would seem presumptuous for this office to say that they were so obviously mistaken that their decision should be disregarded.

There is no need of repeating the argument of Judge Reed in support of these appropriations. His opinion is a matter of record easily accessible. However, a few reflections on the subject in addition to what Judge Reed said may not be amiss.

From the very beginning of our moiety of home rule every session of the Legislature has insisted upon imposing upon the Governor's office a large number of new duties, and no session went farther in that respect than the recent one whose enactments we are now considring. It is possible that some of those duties may be in conflict with Section 11 of the Organic Act. But the great majority of those duties are germain to the functions of the chief executive and of a character which the Legislature believed could naturally be best discharged by his office. Nearly all of those duties involve the disbursement of territorial funds. If the acts imposing those duties and appropriating those funds had provided that the clerical, postage and telegraphic expenses connected with the Governor's end of the work should be paid out of the appropriation the same as other incidental expenses connected therewith, it is not likely any reasonable objection could be interposed. But instead of providing in each act carrying an appropriation that the office expenses of the administration thereof shall be paid out of the appropriation itself, the Legislature has abbreviated and simplified the system by making one separate appropriation for the office and administrative expenses of all such

acts. That this system is illegal I am not prepared to say. Especially will this office be loath to pronounce illegal any system adopted by the Territory which has received the tacit approval of Congress during the last fifteen years. Not only has Congress without protest or disapproval biennially received the information that the Legislature biennnially appropriated funds to pay the expenses of the Governor's office in attending to the administration of the purely Territorial acts, but has refused to supply the Federal funds to enable the Governor to discharge those duties. While inaction on the part of Congress cannot be construed as approval of a legislative violation of an express inhibition, tacitness in face of the assumption of a right which is doubtful will be construed as consent.

Clinton vs. Englebrecht, 80 U.S. 434;

Tiaco vs. Forbes, 226 U.S. 549 (558);

Porto Rico vs. Am. etc. Ry., 254 Fed. 369;

Camunas vs. P. R. Ry., 272 Fed. 924 (931);

Fajardo Sugar Co. vs. Holcomb, 16 Fed. (2nd) 92 (96);

South P. R. Sugar Co. vs. Monoz, 28 Fed. (2nd) 820;

Boca vs. Perez, 42 Pac. 162.

I do not wish to be understood as holding that the Territory may increase the compensation provided by Congress for a Federal official. It has been and is my position that where Congress creates an office, prescribes its functions and its salary, the incumbent of such office has, in my opinion, no authority to accept, and the Territory no authority to pay, a further compensation from the Territorial treasury for performing additional duties germain to his office and within the authority of the Legislature to impose. Where an office is created by Congress for the local government of a Territory the incumbent must discharge the duties of the office for

the salary provided by Congress whether the additional duties are imposed by Congress or by the local Legislature,—if within the latter's authority to impose. If they are not they cannot be legalized by paying extra for their performance. If functions created by the Legislature and required by a Federal official of the Territorial Government are of such a nature that the latter does not have to perform them for the salary provided by the authority which created the office, they are of such a character as to constitute a new office and their performance by a Federal official is inhibited by Section 11 of the Organic Act.

But no such case is before us at the present time.

There seems to be no such office as "Secretary to the Governor," as was pointed out by Judge Reed in the opinion above mentioned. If there were I would say the appropriation of additional salary for him is illegal and should not be paid. Nor has Congress, so far as I can find, appropriated any specific sum for "Secretary to the Governor." All that is done by the Federal Appropriation Act of March 7th, 1928, is to appropriate "for incidental and contingent expenses, clerk hire, $3,520.00" for the Governor's office. With no further information before me as to how the first item in the Territorial appropriation for the Governor's office is to be disbursed I cannot say the appropriation itself is illegal.

I am not unmindful of the fact that the contention is frequently advanced that it is unlawful to impose any Territorial duties on Federal officials. That contention is valid where, as already pointed out, duties are such as to constitute a new office, or where they are absolutely foreign to the general purpose for which the Federal office on which they are imposed is created. There can be no serious doubt but that, with or without the Act of August 29th, 1914, providing that the Organic Act of the Territory shall not "be so construed as to prevent the Legislature passing laws imposing additional duties, not consistent with the present duties of their respective offices, upon the Governor, Marshals, Deputy Marshals, Clerks of

the District Courts, and United States Commissioners acting as Justices of the Peace, Judges of Probate Courts, Recorders, and Coroners" the Legislature may impose additional duties upon the the Federal officials of the Territorial Government, so long as those duties are germain to the respective offices on which they are imposed.

This question was passed upon in a well considered decision by the Supreme Court of Montana in Chumasero vs. Potts, 2 Mon. 242 (256). In that case the court considered an act by the Territorial Legislature requiring of the Governor, Secretary and Marshal the services of canvassing the vote of the Territory at a general election. It was contended that this requirement of those officials was unknown to the Organic Act, and a violation of the provision thereof, which prohibited any Federal official from holding a Territorial office, and, therefore, that the act imposing the duties of canvassing such vote was void. In discusing this contention the court said:

> "We must remember that in the case of Hornbuckle v. Toombs, the Supreme Court says, that Congress has chalked out a general scheme of local government for the Territories, by their Organic Acts, and has intrusted the Legislature with the entire system of municipal law, and the Legislature having such trust may impose what duties it sees proper upon any Federal official here, not inconsistent with their official duties, and such imposition of duties is not the creation of a Territorial office. Hence, when the Legislature imposes duties upon the Federal Judges, as it did in the act in relation to the Territorial prison, or upon the Secretary, as it did in relation to issuing the commission to notaries public, there was not, by the imposition of these duties, the creation of a new office, but simply the creation of an additional duty for an old officer. But if the act did create a new office for the Governor, Secretary and Marshal, they are de facto officers, and cannot, in mandamus, deny that they

are officers, as they have entered upon the performance of their duties, and quo warranto is the proper remedy to try the title to an office in such a case.

"There are certain duties required of the Governor, Secretary and Marshal by the Organic Act, the same as there are certain duties assigned to and required of the President by the Constitution; but since the adoption of the Constitution a thousand duties unknown to the letter of that instrument have been imposed upon the President by acts of Congress, and whoever dreamed that by the enactment of these statutes, or by the imposition of these duties, new offices were created, and that the chief executive was not only President but a thousand other officers by virtue of these acts of Congress? Besides this, Congress has over and over again recognized the validity of this act of the Legislature, requiring the Governor, Secretary and Marshal to canvass the vote of the Territory at general elections, by admitting Delegates to Congress who obtain their seats by virtue of the election and canvass by said canvassing commissioners; and to pronounce against the validity of such law would shake to the foundation our whole system of laws."

In absence of any authorities to the contrary I am constrained to accept the judgment of the Supreme Court of Montana as correctly stating the law.

It follows that in my opinion the appropriations in question are legitimate.

Respectfully submitted,

JOHN RUSTGARD,
Attorney General.

The Legislature has authority to enact a law providing for release of convicts who are confined in jail solely for nonpayment of fine, or fine and costs, but such act cannot be made retroactive.

April 16, 1929.

Hon. Geo. A. Parks,
Governor of Alaska,
Juneau, Alaska.

My dear Governor:

You have asked for the comment of this office upon Senate Bill No. 39 entitled: "AN ACT to provide for the discharge of poor convicts confined in jail or prison solely for the nonpayment of fine, or fine and costs."

Section 1 of this bill is copied from Section 641 of Title 18 United States Code, except that while the Federal law provides for a release after thirty days imprisonment for a fine, the bill before us provides for such release only after sixty days of such incarceration.

I know of no reason why the Act is not valid, but it is limited in its application. It can only affect sentences imposed under laws over which the Legislature has jurisdiction,—it cannot affect either strictly Federal laws nor special Congressional enactments for Alaska beyond the power of the Legislature to either repeal or amend. Thus, the Act will apply to the punishment prescribed under the penal code of Alaska and acts denounced as crimes by the Legislature, but it will not affect the Alaska Bone Dry Law nor any of the provisions of the Elkins Act, nor the Congressional Acts dealing with fish, or game or fur-bearing animals in Alaska.

Section 31 of the Alaska Bone Dry Act provides:

> "That the Legislature of the Territory of Alaska may pass additional legislation in aid of the enforcement of this Act not inconsistent with its provisions."

This section is based on the assumption that the Legislature had no authority to either add to or detract

from any of the provisions of this law, and that special and express permission was necessary even to enable the Legislature to strengthen the Act by provisions designed to facilitate its enforcement.

But aside from the unmistakable inference from the provisions of Section 31, it must be obvious that the Legislature has no authority over any of the provisions of the Alaska Bone Dry Law. It was enacted after the Legislature was created because the Legislature had not been entrusted with jurisdiction over the liquor problem, and it cannot be thought possible that the Congress would take the trouble to enact a law which the Legislature could immediately repeal or amend without special leave to do so .

The same may be said of the Congressional enactments regulating fisheries or designed to protect game and fur-bearing animals, and kindred legislation.

Nor can the Act operate upon sentences imposed before the Act goes into effect owing to the provisions in the Act of 1886 prohibiting the Legislature from enacting special statutes "remitting fines, penalties, or forfeitures." While this bill is general in its terms I am of the opinion that the courts cannot, in view of the aforementioned limitation upon legislative authority, hold that it is operative upon those sentences which have heretofore been imposed. This office is of the opinion that the Legislature has no authority to modify any judgment pronounced by any court even if the Act designed for the purpose is couched in general terms and on its face has the appearance of a general and not of a special statute.

Whether Section 641 Title 18 of United States Code applies to any case tried in Alaska is doubtful. In its terms that section applies to convicts "sentenced by a court of the United States" and the proceedings to release must be had before "any Commissioner of the United States Court."

The District Court of Alaska is not a "court of the

United States" as that term is generally used in Federal statutes.

McAllister vs. U.S., 141 N.S. 174;

Allen vs. Meyers, 1 Alaska 114;

U.S. vs. Doo-noch-keen, 2 Alaska 624;

U.S. vs. Newth, 149 Fed. 302;

U.S. vs. N. P. Whf. & Trd. Co., 4 Alaska 552.

It may also be stated that there is in Alaska no such officer as "Commissioners of the United States Court" referred to in the Federal statute under discussion. While we have "Commissioners" they are different officers appointed under entirely different statutes, and it is, therefore, doubtful whether the machinery exists for carrying into effect in this Territory the statute referred to.

Respectfully submitted,

JOHN RUSTGARD,

Attorney General.

The Legislature has power to prescribe rules for special elections and to fix the time for notices of such elections.

March 24, 1931.

Hon. Geo. A. Parks,
Governor of Alaska,

Juneau, Alaska.

My dear Governor:

The question has been submitted to this office as to whether the provisions of the General Election Law of 1906 relative to public notices of election, the canvass of returns etc. apply to special elections held under Chapter 1 of the Laws of 1921. If they do the last named Act

is in conflict with the Organic Act in many particulars and to the exent of such conflict is void.

Section 5 of the Organic Act provides, **inter alia,** that "all subsequent elections (after the first) * * * * shall be held on the Tuesday next after the first Monday in November biennially thereafter; that the qualifications of electors, the regulations governing the creation of voting precincts, * * * * the giving of notices thereof, the forms of the ballots, the register of votes, the challenging of voters, and the returns and canvass of the returns of the result of all elections for members of the Legisuature, shall be the same as those prescribed in the Act" of 1906.

Section 4 of the Organic Act provides that, "in case of vacancy in either branch of the Legislature the Governor shall order an election to fill such vacancy, giving due and proper notice thereof." Does the expression "due and proper notice" refer to the time and manner of giving notice prescribed by the Act of 1906? I do not think so.

To be sure, Section 5 provides that "all subsequent elections" shall be held in conformity with the regulations prescribed by the original election law. If this is to be taken verbatim no election can be held except on "Tuesday next after the first Monday of November" each even-numbered year, which precludes the possibility of a special election. I take it, therefore, that the provisions of Section 5 have reference to general election, except so far as the strictly indispensable and mandatory features are concerned.

It will also be observed that Section 5 provides that the "forms of the ballots" shall be the same as prescribed by the original election law. (See Section 400 C.L.A.) Nevertheless the Legislature in 1915 prescribed an entirely different form by adopting the Australian system. This was upheld, in the first place, by the District Court in the case of Sulzer vs. Strong, and subsequently by the House of Representatives in the contest of Wickersham vs. Sulzer. This attitude was evidently based upon the theory that Congress furnished the machinery for conducting the elections and prescribed the qualifications for voters, but

that other matters designed primarily to give the people a fair chance to express their wishes may be regulated by the local Legislature. I am not prepared to say that this position is erroneous.

Obviously, if the time for calling an election and the time for and method of canvassing the results prescribed by the Act of 1906 must be adhered to in special elections there can be no opportunity to fill vacancies in less than about three months' time, which might often deprive the public of representation in the Legislature, even though there were time for a special election.

It is not, therefore, unreasonable to assume that when Section 4 provides that when a vacancy occurs the Governor shall order an election, "giving due and proper notice thereof," Congress had reference to no particular form or time, but only to such notice as would give the public as fair opportunity as the circumstances would permit to be apprised of the time and place of the election.

Whether, under conditions which prevail in some divisions of Alaska a ten day notice is sufficient in fact is another matter. Evidently the Legislature did not mean to decide that question, but left it with the judgment of the Governor. Ten days might be considered sufficient in the First Division, while much longer time might be required in some of the other divisions.

It is also worthy of note in this connection, that substantial compliance with the statutory requirement for giving notice of elections is sufficient in absence of fraud. Thus, it has been held that where the great body of the electors have actual notice of the time and place of holding the election, and the question submitted, this is sufficient; and so the formalities of giving notice, although prescribed by statute, are frequently considered directory merely in the absence of an express declaration that the election shall be void unless the formalities are observed.

It follows from what has been said above that this office considers it within the functions of the Legislature

to enact rules for special elections to fill vacancies.

Respectfully submitted,

JOHN RUSTGARD,
Attorney General.

---

1. Marriages according to native Indian custom and not according to the provisions of Chapter 56 of the Laws of 1917 are void.

2. Indians in Alaska are subject to white man's laws.

July 23, 1932.

Geo. A. Parks, Esq.,
Governor of Alaska,
Juneau, Alaska.

My Dear Governor:

You have submitted to this office the question as to whether marriages between natives of Alaska according to the native custom is legal in this Territory, and, in that connection, have submitted the opinion of the Solicitor of the Department of the Interior to the Secretary of Interior under date of April 12, 1930, as well as the opinion of the same officer to the Secretary of the Interior under date of February 24, 1932, both seemingly answering the question in the affirmative.

The problem, so far as Alaska is concerned, seems simple.

Prior to the enactment of Chapter 56 of the Laws of Alaska for the year 1917, common law marriages were legal in the Territory: (Harkrader v. Reed, 5 Alaska 668). That is to say, the agreement between otherwise qualified man and woman to be husband and wife and to live together as such, consummating such contract by actual cohabitation, was a valid marriage.

But by Chapter 56 of the Laws of Alaska for 1917,

the local Legislature prescribed how and by whom marriage is to be performed. Section 12 of this act provides that "all marriages hereafter contracted in violation of any of the requirements of section one of this act shall be null and void."

This provision is too plain to need any construction. That it is valid as to the white population will not be disputed. Is there any cogent reason for doubting it is applicable to the native population? I believe not.

In the States the respective State Legislatures have jurisdiction over Indians **not living on reservations.** On reservations in the States the several tribes own the land within the reservation, conduct their own government thereon, both civil and criminal, and are treated by the Government as foreign nations. So distinctly have they been permitted to maintain their own governmental institutions that the Supreme Court, in Elk v. Wilkins, 112 U. S. 101, held that an Indian born on an Indian reservation was not born "subject to the jurisdiction of the United States" in contemplation of clause one of the Fourteenth Amendment to the Constitution.

But in Alaska the natives of the Territory have always been subject to both the civil and criminal jurisdiction of the United States. (Sah Quah, 31 Fed. 329.)

We have never treated with them as foreign nations, and they have always been subject to the white man's laws, though these laws have not always been enforced among them. We do not recognize their title to the unoccupied lands of the Territory, and have never undertaken to buy land from them. As was said by Judge Wickersham in U. S. vs. Berrigan, 2 Alaska 442,—"all the vacant unappropriated lands in Alaska at the date of the cession of 1867 by Russia became a part of the public domain and public lands of the United States."

The position here taken is supported by the decision of the Supreme Court of Utah in Wo-gin-up, 192 Pac. 267, where it is held that "where an Indian living in a State in which there was no reservation, divorced his wife and

married another, pursuant to the tribal custom, the divorce and second marriage were invalid; there being no compliance with the local laws, since an Indian, not a part of a tribe or on a reseravtion is subject to the laws of the State."

In Alaska there are no Indian reservations in the same sense that this term is used in the States. Indian reservations in the States are tracts of land belonging to the Indian tribes inhabiting such lands, and on which they are permitted to maintain their own government.

In Alaska the government of the United States has at divers places set aside part of the public domain for the sole use and occupancy of natives, but it will not be contended that this removes such natives from the operation of the white man's law.

Respectfully submitted,

JOHN RUSTGARD,
Attorney General.

REPORT

OF THE

Attorney General of Alaska

Biennium of March 1st, 1929
to March 1st, 1931

BY
JOHN RUSTGARD
Attorney General

Juneau, Alaska, March 1st, 1931.

Hon. Geo. A. Parks,
Governor of Alaska,
Juneau, Alaska.

Dear Sir:

Herewith I beg to transmit through your office, to the Legislature of Alaska, my report for the biennium ending February 28, 1931.

Respectfully,
JOHN RUSTGARD,
Attorney General.

REPORT

of the

Attorney General of Alaska

Biennium of March 1st, 1929 to March 1st, 1931

BY

JOHN RUSTGARD
Attorney General

GENERAL WORK OF THE OFFICE

The general work of the office during the last biennium has continued on the same lines as are more particularly described in earlier reports. The demand for written opinions has materially decreased, owing, no doubt, to the fact that a collection of opinions of this office was published and circulated among the officials of the Territory. The number of legal opinions prepared during the biennuim number slightly more than sixty. The bills, resolutions and memorials drafted for the last session of the Legislature and its members numbered one hundred and seven.

LITIGATION

Since the 9th Legislature was in session the Court of Appeals decided the case of Territory vs. First National Bank of Fairbanks in favor of plaintiff. This case was the sequel to the case of the Territory against the same defendant decided two years earlier, and which case was brought to compel the defendant to disclose to the territorial officials all dead accounts which had presumably escheated to the Territory. The recent case was brought for the purpose of declaring certain bonds and war saving certificates held by the First National Bank of Fairbanks escheated to the Territory. The lower court again ruled adversely to the contentions of the

Territory, an appeal was promptly taken and a reversal secured. These two cases settled definitely controverted questions as to the authority of the Territory over First National Banks as well as the rights of the Territory to property of persons who had disappeared and have not been heard from for more than seven years and leaving no known heirs.

Two of the cases instituted for the purpose of collecting cannery taxes and pending at the time the last report was made, have since been settled by full payment of the claims of the Territory.

In the case of Territory vs. Prince Packing Co., commenced more than two years ago, the Territory undertook to foreclose a lien for cannery taxes upon property which did not belong to the debtor but to another company, and which had been used in the canning of salmon for which the tax became due. The complaint was demurred to on the ground that the Territory had no lien on such property. The case was submitted on briefs in May, 1929, and was decided in favor of the Territory in January, 1931, but the case will not culminate for considerable time to come.

The Territory also intervened in the case of Malbin Bros. vs. W. J. Imlach Packing Co. for the purpose of enforcing a tax lien. That case is still pending, though decision was rendered supporting the contentions of the Territory.

Since the last Legislature was in session Wood Freeman of Tacoma, Washington, commenced a proceeding in the District Court at Juneau, for the purpose of enjoining the Treasurer from enforcing the tax of $250.00 on nonresident trollers imposed by the last session of the Legislature. The case was heard on a demurrer to plaintiff's complaint interposed by this office on behalf of the Territorial Treasurer. The demurrer was sustained by the lower court. On appeal to the U. S. Circuit Court of Appeals the decision of the lower court was reversed on the theory that inasmuch as the complaint alleges that trollers earn on an average only $500.00 per season and this must be accepted as admitted by the demurrer, the tax is practically prohibitive. This office applied to the Supreme Court of the United States for a certiorari, which was denied on the 25th of February, 1931. As soon as a mandate is returned the defendant will file an answer and try the facts as to whether or not the tax is prohibitive, this being the course seemingly suggested by the Court of Appeals.

ESTATES

The number of estates of deceased persons, which, since the last session of the Legislature, have come into the office and either been disposed of or are still pending number fifty-five.

EXPENSES OF OFFICE

During the biennium from March 1st, 1929, to March 1st, 1931, the expenses of the office of Attorney General have been as follows:

Salary of Attorney General	$10,000.00
Salary of Stenographer	4,048.32
Extra Clerical Assistance	15.50
Traveling Expenses	639.73
Court Costs and Briefs	591.30
Contingent Expenses	511.30
Additional Law Books	539.02
Total	$16,345.17

As usual, court costs collected on cases settled are paid directly to the Treasurer of the Territory and no segregation has been made to enable this office to determine the total amount thus returned.

RECOMMENDATIONS FOR LEGISLATION

I

The need of a compilation of the statutes of the Territory is growing apace, and we have now reached the point where it is next to impossible for one who does not specialize upon knowing the statutory law of the Territory to find from the books the present statutory provisions on any particular subject. Heretofore I have each biennium recommended a compilation, and do so now. I suggest that a suitable appropriation be made and placed at the disposal of the Governor for the purpose of paying the expenses of the undertaking.

II

By Chapter 45 of the Laws of 1921 the Legislature provides a summary method for disposing of estates left by persons who die as inmates of the Pioneers' Home or who had been receiving an allowance from the Territory. When two years ago this office presented to the Legislature a bill for a compilation and revision of the eighteen different acts dealing with the subject of indigents, this chapter was retained in the compilation, but was by the Legislature eliminated. There is, therefore, at the present time no method provided for disposing of property left by decedent beneficiaries of the Territory's gratuities except by administration of the estate in probate court. I believe that it would be greatly to the advantage of the Territory were the provisions of the law of 1921 restored.

III

In my last report I recommended the following amendments to the general taxing act of the Territory (Chapter 31 Laws of 1921). As no action was taken on the subject, and as I deem the amendments essential, especially if it be the intention of the Legislature to make a permanent compilation of the statutes, I therefore repeat the recommendation on this subject in the form they were made two years ago:

(a)

Sub-section 20th of Chapter 31 of the Laws of 1921 levies a tax of "1 percent of the net income in excess of $5,000.00" on mining. The last provision of this sub-section provides that where a lessor "receives royalties from more than one mining property he shall pay the tax on the aggregate income over $5,000.00." The opening sentence of that sub-section has been amended so as to provide that the net income tax shall apply only to net incomes in excess of $10,000.00. But no amendment was made to the last provision of the sub-section relative to royalties from 2 or more properties. As a result of this incongruity this office has been forced to hold that where a person received a royalty from only one property he has an exemption of $10,000.00, but where he receives a royalty from more than one property he has an exemption of only $5,000.00. (See volume 3 of Opinions of Attorney General, page 250.) This situation was probably not intended by the Legislature, but the construction applied became imperative by the language employed. I suggest such amendment as is consistent with the judgment of the Legislature on this subject.

(b)

Section 4 of the General Taxing Act above referred to provides for a fine of not to exceed $1,000.00 for violation of the statute, but nothing is stated as to who should receive the fine. Undoubtedly the fine should be paid to the Territorial Treasurer because Congress has imposed upon the Territory the duty to prosecute at its own expense violations of the taxing statutes.

(c)

Section 7 of the General Taxing Act provides that "prosecution for the violation of any other provisions of this act may be by information filed by the Attorney General or other authorized legal counsel of the Territory." Many prosecutions are instituted by the tax collector working under the directions of the Treasurer of the Territory to whom blank forms for complaints and other documents have been furnished by this office, but the question has at times arisen as to whether such tax collector is "authorized legal counsel of the Territory" in contemplation of this act. An amendment to clarify this section should be adopted and at the same time any deputy marshal should be authorized to file complaint.

IV

In my last report I made the following recommendation:

"It has happened in the past, and I expect it to happen in the near future, that unpatented mining claims are turned over to the Territory as escheated property. There are no funds available from which assessment work on such claims can be paid, and unless such claims can be sold before the time for assessment work expires, they will be forfeited and lost to the Territory. I recommend that a small sum be made available for the purpose of paying assessment work in such cases, if it should be found necessary to do so, in order to save valuable property for the Territory."

The Legislature did not see fit to adopt the suggestion, and as a result the Territory in 1929 lost a mining claim which could probably have been sold for some $10,000.00.

I recommend that this problem be reconsidered during the session of the 10th Legislature.

V

Sub-section b of Section 2 of Chapter 73 of Laws of 1923 provides that Articles of Incorporation may be amended "when authorized by the holders of a majority of the stock given at a regular meeting of the stockholders", while Section 21 of the same Chapter provides that a vote of "two-thirds of all its stock" shall be necessary for such amendment. This obscurity of the present statute should be clarified by an amendment.